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U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 84 Monday,

No. 249 December 30, 2019

Pages 71735–72226

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Federal Register

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DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 6, 34, 46, 160, 161, 163, and 167

[Docket ID OCC–2019–0004]

RIN 1557–AE50

Other Real Estate Owned and Technical Amendments; Correction

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; correction.

SUMMARY: On October 22, 2019, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** a final rule to revise the other real estate owned rule and make related technical amendments. The final rule had an effective date of December 1, 2019. On November 21, 2019, the OCC published a correction to that final rule in the **Federal Register** amending the final rule's effective date to January 1, 2020. This document corrects and supplements the November 21, 2019, final rule.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kevin Korzeniewski, Counsel, or J. William Binkley, Attorney, Chief Counsel's Office, (202) 649–5490; or for persons who are hearing impaired, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 2019, the OCC published in the **Federal Register** a final rule to revise its rule on other real estate owned (OREO) at 12 CFR part 34, subpart E, and make related technical amendments (OREO final rule).[1] On November 21, 2019, the OCC published a correction to the OREO final rule in the **Federal Register** amending the OREO final rule's effective date to January 1, 2020 (the November 21, 2019, final rule).[2] This document corrects and supplements the November 21, 2019, final rule with the additional regulatory analyses below.

II. Additional Regulatory Analyses

Good Cause To Dispense With Notice and Public Procedure

The OCC ordinarily publishes a notice of proposed rulemaking in the **Federal Register** to provide for notice and public procedure before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)). Nevertheless, an agency can dispense with this notice and public procedure if it finds, for good cause, that the notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of its findings and reasons in the final rule.

The OCC finds that that there is good cause to dispense with notice and public procedure requirements in this final rule and the November 21, 2019, final rule because they are unnecessary. The November 21, 2019, final rule merely delayed the effective date of the OREO final rule to January 1, 2020, that was previously subjected to notice and public procedure. The delayed effective date avoids confusion about adopting different effective dates for national banks and Federal savings associations. This final rule merely supplements the regulatory analyses for the November 21, 2019, final rule. Therefore, the OCC finds it unnecessary to undertake further notice and public procedure with respect to this final rule and the November 21, 2019, final rule.

Congressional Review Act

Pursuant to the Congressional Review Act, the Office of Management and Budget will determine if this final rule and the November 21,2019, final rule are not ''major rules,'' as defined at 5 U.S.C. 804(2). As required by the Congressional Review Act, the OCC will submit the final rules and other appropriate reports to Congress and the Government Accountability Office for review.

Dated: December 20, 2019.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

[FR Doc. 2019–28054 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

Notification of Inflation Adjustments for Civil Money Penalties

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notification of monetary penalties 2020.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is providing notice of its maximum civil money penalties as adjusted for inflation. The inflation adjustments are required to implement the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: The adjusted maximum amount of civil money penalties in this document are applicable to penalties assessed on or after January 1, 2020, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Chief Counsel's Office, (202) 649–5490, or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: This document announces changes to the maximum amount of each civil money penalty (CMP) within the OCC's jurisdiction to administer to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Adjustment Act),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Adjustment Act).[2] Under the 1990 Adjustment Act, as amended, federal agencies must make

[1] 84 FR 56369 (Oct. 22, 2019).

[2] 84 FR 64193 (Nov. 21, 2019).

[1] Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, *codified at* 28 U.S.C. 2461 note.

[2] Public Law 114–74, Title VII, section 701(b), Nov. 2, 2015, 129 Stat. 599, *codified at* 28 U.S.C. 2461 note.

annual adjustments to the maximum amount of each CMP the agency administers. The Office of Management and Budget (OMB) is required to issue guidance to federal agencies no later than December 15 of each year providing an inflation adjustment multiplier (*i.e.,* the inflation adjustment factor agencies must use) applicable to CMPs assessed in the following year. The agencies are required to publish their CMPs, adjusted pursuant to the multiplier provided by OMB, by January 15 of the applicable year.

To the extent an agency has codified a CMP amount in its regulations, the agency would need to update that amount by regulation. However, if an agency has codified the formula for making the CMP adjustments, then subsequent adjustments can be made solely by notice.[3] In 2018, the OCC published a final regulation to remove the CMP amounts from its regulations, while updating those amounts for inflation through the notice process.[4]

On December 16, 2019, the OMB issued guidance to affected agencies on implementing the required annual adjustment, which included the relevant inflation multiplier.[5] The OCC has applied that multiplier to the maximum CMPs allowable in 2019 for national banks and Federal savings associations as listed in the 2019 CMP notice[6] to calculate the maximum amount of CMPs that may be assessed by the OCC in 2020.[7] There were no new statutory CMPs administered by the OCC during 2019.

The following charts provide the inflation-adjusted CMPs for use beginning on January 1, 2020, pursuant to 12 CFR 19.240(b) and 109.103(c)(2) for conduct occurring on or after November 2, 2015:

PENALTIES APPLICABLE TO NATIONAL BANKS

U.S. Code citation	Description and tier (if applicable)	Maximum penalty amount (in dollars)[1]
12 U.S.C. 93(b)	Violation of Various Provisions of the National Bank Act:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 164	Violation of Reporting Requirements:	
	Tier 1	4,098
	Tier 2	40,979
	Tier 3	[2] 2,048,915
12 U.S.C. 481	Refusal of Affiliate to Cooperate in Examination	10,245
12 U.S.C. 504	Violation of Various Provisions of the Federal Reserve Act:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 1818(i)(2)[3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	337,016
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instrument for Transfers to Third Parties:	
	Per violation	2,976
12 U.S.C. 1884	Violation of the Bank Protection Act	297
12 U.S.C. 1972(2)(F)	Violation of Anti-Tying Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 3110(a)	Violation of Various Provisions of the International Banking Act (Federal Branches and Agencies)	46,825
12 U.S.C. 3110(c)	Violation of Reporting Requirements of the International Banking Act (Federal Branches and Agencies):	
	Tier 1	3,747
	Tier 2	37,458
	Tier 3	[2] 1,872,957
12 U.S.C. 3909(d)(1)	Violation of International Lending Supervision Act	2,549
15 U.S.C. 78u–2(b)	Violation of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	Tier 1 (natural person)—Per violation	9,639
	Tier 1 (other person)—Per violation	96,384
	Tier 2 (natural person)—Per violation	96,384
	Tier 2 (other person)—Per violation	481,920
	Tier 3 (natural person)—Per violation	192,768
	Tier 3 (other person)—Per violation	963,837
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	11,767
	Subsequent violations	23,533

[3] See OMB Memorandum M–18–03, ''Implementation of the 2018 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' at 4, which permits agencies that have codified the formula to adjust CMPs for inflation to update the penalties through a notice rather than a regulation.

[4] 83 FR 1517 (Jan. 12, 2018) (final rule); 83 FR 1657 (Jan. 12, 2018) (2018 CMP Notice).

[5] The inflation adjustment multiplier for 2020 is 1.01764. *See* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2019).

[6] *See* 83 FR 66599 (Dec. 27, 2018).

[7] Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the OCC's regulations in effect prior to the enactment of the 2015 Adjustment Act.

PENALTIES APPLICABLE TO NATIONAL BANKS—Continued

U.S. Code citation	Description and tier (if applicable)	Maximum penalty amount (in dollars) [1]
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,226

[1] The maximum penalty amount is per day, unless otherwise indicated.
[2] The maximum penalty amount for a national bank is the lesser of this amount or 1 percent of total assets.
[3] These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1693o, 1681s, 1691c, and 1692*l*.

PENALTIES APPLICABLE TO FEDERAL SAVINGS ASSOCIATIONS

U.S. Code citation	CMP description	Maximum penalty amount (in dollars) [1]
12 U.S.C. 1464(v)	Reports of Condition:	
	1st Tier	4,098
	2nd Tier	40,979
	3rd Tier	[2] 2,048,915
12 U.S.C. 1467(d)	Refusal of Affiliate to Cooperate in Examination	10,245
12 U.S.C. 1467a(r)	Late/Inaccurate Reports:	
	1st Tier	4,098
	2nd Tier	40,979
	3rd Tier	[2] 2,048,915
12 U.S.C. 1817(j)(16)	Violation of Change in Bank Control Act:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 1818(i)(2) [3]	Violation of Law, Unsafe or Unsound Practice, or Breach of Fiduciary Duty:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post-Employment Restrictions:	
	Per violation	337,016
12 U.S.C. 1832(c)	Violation of Withdrawals by Negotiable or Transferable Instruments for Transfers to Third Parties:	
	Per violation	2,705
12 U.S.C. 1884	Violation of the Bank Protection Act	297
12 U.S.C. 1972(2)(F)	Violation of Provisions regarding Correspondent Accounts, Unsafe or Unsound Practices, or Breach of Fiduciary Duty:	
	Tier 1	10,245
	Tier 2	51,222
	Tier 3	[2] 2,048,915
15 U.S.C. 78u–2(b)	Violations of Various Provisions of the Securities Act, the Securities Exchange Act, the Investment Company Act, or the Investment Advisers Act:	
	1st Tier (natural person)—Per violation	9,639
	1st Tier (other person)—Per violation	96,384
	2nd Tier (natural person)—Per violation	96,384
	2nd Tier (other person)—Per violation	481,920
	3rd Tier (natural person)—Per violation	192,768
	3rd Tier (other person)—Per violation	963,837
15 U.S.C. 1639e(k)	Violation of Appraisal Independence Requirements:	
	First violation	11,767
	Subsequent violations	23,533
42 U.S.C. 4012a(f)(5)	Flood Insurance:	
	Per violation	2,226

[1] The maximum penalty amount is per day, unless otherwise indicated.
[2] The maximum penalty amount for a federal savings association is the lesser of this amount or 1 percent of total assets.
[3] These amounts also apply to statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2804, 3108, 3349, 4309, and 4717 and 15 U.S.C. 1607, 1681s, 1691c, and 1692*l*.

Dated: December 19, 2019.

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–28053 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2019–0025]

RIN 1557–AE72

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1690]

RIN 7100–AF 68

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AF20

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).

DATES: *Effective Date:* January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Frances C. Augello, Special Counsel, Emily Boyes, Counsel, or Maria Riegger, Counsel, Chief Counsel's Office, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597; or Vonda Eanes, Director for CRA and Fair Lending Policy, Compliance Risk Policy Division, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Amal S. Patel, Counsel, (202) 912–7879, or Cathy Gates, Senior Project Manager, (202) 452–2099, Division of Consumer and Community Affairs; or Gavin L. Smith, Senior Counsel, (202) 452–3474, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The CRA regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, the Board, and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). At that time, the Agencies noted that the CPI–W is also used in connection with other federal laws, such as the Home Mortgage Disclosure Act. *See* 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.[3]

The threshold for small banks and small savings associations was revised most recently in December 2018 and became effective January 1, 2019. 83 FR 66601 (Dec. 27, 2018). The current CRA regulations provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.284 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $321 million as of December 31 of both of the prior two calendar years and less than $1.284 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule revises these thresholds.

During the 12-month period ending November 2019, the CPI–W increased by 1.62 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2020, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The Agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). As a result, §§ 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) of the Agencies' respective CRA regulations are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. For this reason, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2020. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on 12-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[4] In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[5]

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply. Nevertheless, the requirements of section 302 of RCDRIA, and the administrative burdens and benefits of the final rule, were considered as part of the overall rulemaking process.

Congressional Review Act

FDIC

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[6] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[7]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[8] As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

OCC

Pursuant to the Congressional Review Act, OMB's Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined at 5 U.S.C. 804(2). As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

[4] 12 U.S.C. 4802(a).

[5] 12 U.S.C. 4802(b).

[6] 5 U.S.C. 801 *et seq.*

[7] 5 U.S.C. 801(a)(3).

[8] 5 U.S.C. 804(2).

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. Section 25.12 is amended by revising paragraph (u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. *Intermediate small bank* means a small bank with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. Section 195.12 is amended by revising paragraph (u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. *Intermediate small savings association* means a small savings association with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 5. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. *Intermediate small bank* means a small bank with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 8. Section 345.12 is amended by revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. *Intermediate small bank* means a small bank with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 11, 2019.

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 11, 2019.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, December 11, 2019.

Federal Deposit Insurance Corporation.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–27288 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Part 1310

RIN 4030–ZA00

Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Final interpretive guidance.

SUMMARY: This final interpretive guidance, which replaces the Financial Stability Oversight Council's existing interpretive guidance on nonbank financial company determinations, describes the approach the Council intends to take in prioritizing its work to identify and address potential risks to U.S. financial stability using an activities-based approach, and enhancing the analytical rigor and transparency in the processes the Council intends to follow if it were to consider making a determination to subject a nonbank financial company to supervision by the Board of Governors of the Federal Reserve System.

DATES: *Effective Date:* January 29, 2020.

FOR FURTHER INFORMATION CONTACT: Howard Adler, Office of Domestic Finance, Treasury, at (202) 622–2409; Eric Froman, Office of the General Counsel, Treasury, at (202) 622–1942; or Mark Schlegel, Office of the General Counsel, Treasury, at (202) 622–1027.

SUPPLEMENTARY INFORMATION:

I. Background

The statutory purposes of the Financial Stability Oversight Council (the ''Council'') are to identify risks to U.S. financial stability, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. The Council's authorities to accomplish these statutory purposes include authorities to facilitate information sharing and coordination among regulators, monitor the financial services marketplace, make recommendations to regulators, and require supervision by the Board of Governors of the Federal Reserve System (the ''Federal Reserve'') for nonbank financial companies that may pose risks to U.S. financial stability.

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321) (the ''Dodd-Frank Act'') established the Council. The purposes of the Council under section 112 of the Dodd-Frank Act (12 U.S.C. 5322) are (A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.

As a threshold matter, the Council emphasizes the importance of market discipline, rather than government intervention, as a mechanism for addressing potential risks to U.S. financial stability posed by financial companies. The Dodd-Frank Act gives the Council broad discretion to determine how to respond to potential threats to U.S. financial stability. The Council's duties under section 112 of the Dodd-Frank Act include monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability, and recommending to the Council member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies. The Council's duties under section 112 also include making recommendations to primary financial regulatory agencies [1] to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among financial companies and markets. The Council intends to seek to identify, assess, and address potential risks and emerging threats on a system-wide basis by taking an activities-based approach to its work, as further explained below.

The Dodd-Frank Act also authorizes the Council to determine that certain nonbank financial companies will be subject to supervision by the Federal Reserve and prudential standards. The Federal Reserve is responsible for establishing the prudential standards that will be applicable, under section 165 of the Dodd-Frank Act, to nonbank financial companies subject to a Council determination [2] under section 113 of the Dodd-Frank Act. The Council has previously issued rules, guidance, and other public statements regarding its process for evaluating nonbank financial companies for a potential determination. On April 11, 2012, the Council issued interpretive guidance (the ''2012 Interpretive Guidance'') regarding the manner in which the Council makes determinations under section 113 of the Dodd-Frank Act, as an appendix to a final rule (together, the ''2012 Final Rule and Interpretive Guidance'').[3] On May 22, 2012, the Council approved hearing procedures relating to the conduct of hearings before the Council in connection with proposed determinations regarding nonbank financial companies and financial market utilities and related emergency waivers or modifications under sections 113 and 804 of the Dodd-Frank Act (as amended in 2013 and 2018, the ''Hearing Procedures'').[4] On February 4, 2015, the Council adopted supplemental procedures (the ''2015 Supplemental Procedures'') to the 2012 Final Rule and Interpretive Guidance.[5] In June 2015, the Council published staff guidance with details regarding the methodologies used in Stage 1 thresholds in connection with the determination process under section 113.[6] On November 17, 2017, the Department of the Treasury issued a report to the President in response to a Presidential Memorandum directing the Secretary of the Treasury to conduct a thorough review of the determination and designation processes of the Council.[7]

On March 6, 2019, the Council approved proposed interpretive guidance (the ''Proposed Guidance''), which incorporated certain provisions of the 2015 Supplemental Procedures, to revise and update the 2012 Interpretive Guidance.[8] The Proposed Guidance, which included a request for public comment and over 40 specific questions, was intended to enhance the Council's transparency, analytical rigor, and public engagement. The comment period for the Proposed Guidance closed on May 13, 2019.

The Council received 26 comment letters in response to the Proposed Guidance, of which nine were from companies or trade associations in the asset management industry, four were from trade associations in the insurance industry, three were from other trade associations, seven were from various advocacy groups, one was from two previous Chairpersons of the Council and two previous Chairmen of the Federal Reserve, one was from an association of state insurance regulators, and one was from a group of academics.

[1] ''Primary financial regulatory agency'' is defined in section 2(12) of the Dodd-Frank Act, 12 U.S.C. 5301(12).

[2] Section 113 of the Dodd-Frank Act, 12 U.S.C. 5323, refers to a Council ''determination'' regarding a nonbank financial company. This release refers to ''determination'' and ''designation'' interchangeably for ease of reading.

[3] The 2012 Final Rule and Interpretive Guidance added a new part 1310 to title 12 of the Code of Federal Regulations, consisting of final rules (12 CFR 1310.1–1310.23) and interpretive guidance (Appendix A to Part 1310-Financial Stability Oversight Council Guidance for Nonbank Financial Company Designations). *See* 12 CFR part 1310, app. A (2012).

[4] 77 FR 31855 (May 30, 2012); 78 FR 22546 (April 16, 2013); 83 FR 12010 (March 19, 2018).

[5] Financial Stability Oversight Council Supplemental Procedures Relating to Nonbank Financial Company Determinations (February 4, 2015), available at *https://www.treasury.gov/initiatives/fsoc/designations/Documents/Supplemental%20Procedures%20Related%20to%20Nonbank%20Financial%20Company%20Determinations%20-%20February%202015.pdf.*

[6] *See* Council, Staff Guidance Methodologies Relating to Stage 1 Thresholds (June 8, 2015), available at *https://www.treasury.gov/initiatives/fsoc/designations/Documents/FSOC%20Staff%20Guidance%20-%20Stage%201%20Thresholds.pdf.*

[7] Treasury, Report to the President of the United States in Response to the Presidential Memorandum Issued April 21, 2017: Financial Stability Oversight Council Designations (November 17, 2017), available at *https://www.treasury.gov/press-center/press-releases/documents/pm-fsoc-designations-memo-11-17.pdf.*

[8] 84 FR 9028 (March 13, 2019). On the same date, the Council adopted a final rule stating that the Council shall not amend or rescind its interpretive guidance on nonbank financial company determinations without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under the Administrative Procedure Act. *See* 84 FR 8958 (March 13, 2019).

(Comment letters are available online at *http://www.regulations.gov/docket?D=FSOC-2019-0001*.) Twenty of the commenters were generally supportive of the proposal, including the primary focus on the activities-based approach and analytical enhancements to the Council's designation process. Six commenters were generally opposed to the proposal, arguing it unnecessarily limited the Council's tools for addressing systemic risk. Some of the commenters generally opposed to the proposal nonetheless stated that an activities-based approach may be appropriate in certain circumstances.

This final interpretive guidance (the ''Final Guidance'') replaces in its entirety the 2012 Interpretive Guidance. In addition, in connection with the adoption of the Final Guidance, the Council has rescinded the 2015 Supplemental Procedures and the 2015 staff guidance regarding the Stage 1 thresholds. The Council's rules codified at 12 CFR 1310.1 to 1310.23 and the Council's Hearing Procedures remain in effect.

The Council expects that the Final Guidance will better enable the Council to:

- Leverage the expertise of financial regulatory agencies;
- Promote market discipline;
- Maintain competitive dynamics in affected markets;
- Appropriately tailor regulations to cost-effectively minimize burdens; and
- Ensure the Council's designation analyses are rigorous and transparent.

II. Overview of Final Guidance

The Final Guidance revises the 2012 Interpretive Guidance to ensure that the Council's work is clear, transparent, and analytically rigorous, and to enhance the Council's engagement with companies, regulators, and other stakeholders. By issuing clear and transparent guidance, the Council seeks to provide the public with sufficient information to understand the Council's concerns regarding risks to financial stability, while appropriately protecting information submitted by companies and regulators to the Council.

A. Key Changes From 2012 Interpretive Guidance and Proposed Guidance

1. Key Changes From 2012 Interpretive Guidance

The Final Guidance substantially transforms the Council's previous procedures. Following are high-level descriptions of several of the most important changes, which are explained in greater detail below.

First, under the Final Guidance, the Council will prioritize its efforts to identify, assess, and address potential risks and threats to U.S. financial stability through a process that begins with an activities-based approach. This approach is consistent with the Council's priorities of identifying and addressing potential risks and emerging threats on a system-wide basis, in order to reduce the potential for competitive market distortions that could arise from entity-specific determinations, and allow relevant financial regulatory agencies to address identified potential risks. The Council will pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk or threat cannot be adequately addressed through an activities-based approach. This approach will enable the Council to effectively identify and address the underlying sources of risks to financial stability on a system-wide basis, rather than addressing risks only at a particular nonbank financial company that may be designated.

Second, before issuing nonbinding recommendations to a primary financial regulatory agency under section 120 of the Dodd-Frank Act, the Council will ascertain whether the primary financial regulatory agency would be expected to perform a cost-benefit analysis of the actions it would take in response to the Council's contemplated recommendation. In cases where the primary financial regulatory agency would not be expected to conduct such an analysis, the Council itself will—prior to making a final recommendation—conduct an analysis, using empirical data, to the extent available, of the benefits and costs of the actions that the primary financial regulatory agency would be expected to take in response to the contemplated recommendation. When the Council conducts its own analysis, the Council will make a recommendation under section 120 only if it believes that the results of its assessment of benefits and costs support the recommendation.

Third, in the event the Council considers a nonbank financial company for a potential determination under section 113, the Council will perform a cost-benefit analysis prior to making a determination. The Council will make a determination under section 113 only if the expected benefits to financial stability from the determination justify the expected costs that the determination would impose.

Fourth, under the Final Guidance, the Council will assess the likelihood of a nonbank financial company's material financial distress when evaluating the firm for a potential determination, in order to evaluate the extent to which a determination may promote U.S. financial stability.

Fifth, the Final Guidance condenses the prior three-stage process for a determination under section 113 into two stages, by eliminating prior stage 1 (as established by the 2012 Interpretive Guidance). Under prior stage 1, a set of uniform quantitative metrics was applied to a broad group of nonbank financial companies in order to identify nonbank financial companies for further evaluation and to provide clarity for other nonbank financial companies that likely would not be subject to evaluation for a potential determination. The Final Guidance eliminates prior stage 1, because it generated confusion among firms and members of the public and is not compatible with the prioritization of an activities-based approach.

Sixth, the Final Guidance further enhances the new, two-stage determination process by making numerous procedural improvements and incorporating several provisions of the 2015 Supplemental Procedures, which were intended to facilitate the Council's engagement and transparency. The Final Guidance will increase the Council's engagement with companies and their existing regulators during the determination process. One of the goals of this enhanced engagement is to provide a company under review with greater visibility into the aspects of its business that may pose risks to U.S. financial stability. Enhanced engagement will also allow the company to provide the Council with relevant information, which will help to ensure that the Council is making decisions based on a broad set of data and a rigorous analysis. By making a company aware early in the review process of the potential risks the Council has identified, the Council seeks to give the company more information and tools to mitigate those risks prior to any Council designation, thereby providing a potential pre-designation ''off-ramp.''

The Final Guidance also includes procedures intended to clarify the post-designation ''off-ramp.'' The Final Guidance provides that in the event the Council makes a final determination regarding a company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its final determination. Except in cases where new material risks arise over time, if a company adequately addresses the potential risks identified in writing by the Council at the time of the final determination and in

subsequent reevaluations, the Council should generally be expected to rescind its determination regarding the company. By clarifying the ''off-ramp'' to rescission, and taking other steps to promote designated nonbank financial companies' ability to reduce the threat they could pose to financial stability, the Council seeks to both protect the U.S. financial system and reduce the regulatory burden on the companies.

Seventh, the Final Guidance eliminates the six-category framework described in the 2012 Interpretive Guidance. As noted in the 2012 Interpretive Guidance, the Dodd-Frank Act requires the Council to take into account 10 considerations when evaluating a company for a potential determination, and authorizes the Council to consider ''any other risk-related factors that the Council deems appropriate.'' [9] The 2012 Interpretive Guidance established an analytic framework that grouped all relevant factors, including the 10 statutory considerations [10] and any additional risk-related factors, into six categories (size, interconnectedness, substitutability, leverage, liquidity risk and maturity mismatch, and existing regulatory scrutiny). The six-category framework did not prove useful in guiding the Council's evaluations, and unnecessarily complicated the framework for the Council's analysis. As a result, the Final Guidance eliminates this six-category framework.

2. Key Changes From Proposed Guidance

Following are high-level descriptions of several changes in this Final Guidance from the Proposed Guidance. These changes are explained in greater detail below.

First, in response to comments that the Council should provide more detail on how it will conduct its analysis under the activities-based approach, the Final Guidance clarifies that the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. Among other factors, the Final Guidance provides that the Council will also take into account the risk profiles and business models of market participants engaging in the products, activities, or practices under evaluation.

Second, the Final Guidance provides additional clarity on the process by which the Council may issue recommendations under section 120, including the Council's analysis of the costs and benefits associated with such recommendations.

Third, the Final Guidance has been revised in response to comments regarding the proposed interpretation of ''nonbank financial company'' as including any successor of a company that is subject to a final determination of the Council. In response to comments that the proposed interpretation was overly broad, the Final Guidance has been revised to state, more narrowly, that the Council intends to interpret the statutory term ''nonbank financial company supervised by the Board of Governors'' as including any nonbank financial company that acquires, directly or indirectly, a majority of the assets or liabilities of a company that is subject to a final determination of the Council. As a result, if a nonbank financial company subject to a final determination of the Council sells or otherwise transfers a majority of its assets or liabilities, the acquirer will succeed to, and become subject to, the Council's determination. As noted below and in section V of the Final Guidance, the Council may grant a designated nonbank financial company's request for a reevaluation of the determination before the next annual reevaluation, in appropriate cases.

Fourth, the Final Guidance has been revised to add greater specificity regarding the Council's assessment of costs and benefits in connection with a determination under section 113 of the Dodd-Frank Act. For example, the Final Guidance states that when possible, the Council will quantify reasonably estimable benefits and costs, using ranges, as appropriate, and based on empirical data when available.

Fifth, the description of the Council's analytic process for assessing the likelihood of a company's material financial distress has been revised. The Final Guidance provides that to conduct this assessment, the Council may consider factors such as leverage (both on and off balance sheet), potential risks associated with asset reevaluations (whether such reevaluations arise from market disruptions or severe macroeconomic conditions), reliance on short-term funding or other fragile funding markets, maturity transformation, and risks from exposures to counterparties or other market participants.

Sixth, the Proposed Guidance stated that the Council or its Deputies Committee [11] would vote to commence review of a nonbank financial company in Stage 1 of the determination process. In response to public comments, the Final Guidance provides that the Council will vote to commence any review of a nonbank financial company in Stage 1. The table below provides a summary of several key transition points under the Final Guidance:

Transition point	Persons voting	Voting threshold
Begin step one of ABA	No required vote	N/A.
Begin step two of ABA	No required vote	N/A.
Begin Stage 1 of Determination Process	Council member vote	Majority.
Begin Stage 2 of Determination Process	Council member vote	Majority.
Make Proposed Determination	Council member vote	Two-thirds.[12]
Make Final Determination	Council member vote	Two-thirds.

The following sections provide detailed descriptions of (1) the activities-based approach (section B); (2) the analytic framework for the Council's evaluation of nonbank financial companies for a potential determination under section 113 of the Dodd-Frank Act (section C); and (3) the process that the Council will generally follow when determining whether to designate, or rescind the designation of, a nonbank financial company (section D).

[9] *See* Dodd-Frank Act section 113(a)(2), 12 U.S.C. 5323(a)(2).

[10] *See* section C(1) below for a list of the 10 statutory considerations.

[11] The Council's Deputies Committee is composed of senior officials from each Council member and member agency. It coordinates and oversees the work of the Council's other interagency staff committees.

[12] Under 12 CFR 1310.10(b)(2), any proposed or final determination requires the vote of not fewer than two-thirds of the voting members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

B. Activities-Based Approach

1. Overview

Under the Final Guidance, the Council will prioritize its efforts to identify, assess, and address potential risks and threats to U.S. financial stability through a process that begins with an activities-based approach. The Council will pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk or threat cannot be adequately addressed through an activities-based approach. This approach reflects two priorities: (1) Identifying and addressing, in consultation with relevant financial regulatory agencies,[13] potential risks and emerging threats on a system-wide basis, thereby reducing the potential for competitive distortions among financial companies and in markets that could arise from entity-specific determinations, and (2) allowing relevant financial regulatory agencies, which generally possess greater information and expertise with respect to company, product, and market risks, to address potential risks, rather than subjecting the companies to new regulatory authorities. The 2012 Final Rule and Interpretive Guidance did not address the concept of an activities-based approach.

As part of its activities-based approach, the Council will examine a diverse range of financial products, activities, and practices that could pose risks to U.S. financial stability. The Council's annual reports highlight the types of activities the Council will evaluate, including activities related to the extension of credit, maturity and liquidity transformation, market making and trading, and other key functions critical to support the functioning of financial markets.[14]

Most commenters supported the activities-based approach, stating that it is the most effective means to address potential risks that may arise in particular industries and would avoid competitive distortions from the entity-specific approach. Some commenters supportive of alternatives to the entity-specific approach stated that designating individual nonbank financial companies could create inefficiencies and competitive disadvantages in capital markets. One commenter stated that primary regulators should tailor their regulations based on the unique attributes of each company and consider the cumulative effects of regulations on companies. By relying on the experience and expertise of relevant financial regulatory agencies during the activities-based approach, the Council expects that any response to an identified risk to financial stability will be tailored in a manner that reflects the unique attributes of affected companies and their existing regulatory framework. One commenter stated that the activities-based approach should cover activities, but not products and practices. The Council believes that the activities-based approach would be rendered less effective if it excluded products and practices, because activities that may pose risks to financial stability often involve the issuance of products or the conduct of practices.

Other commenters stated that there should be a high bar to Council actions. These commenters stated that the Council and primary regulators should bear the burden of proof in establishing the existence of a risk to financial stability and of demonstrating that the Council's proposed response to the risk is optimal from an effectiveness and efficiency standpoint. The Council expects that its analyses will sufficiently establish the existence of any potential risk or emerging threat to financial stability to which the Council seeks to respond. Further, any regulation adopted by relevant financial regulatory agencies in response to the Council's activities-based approach would generally be subject to existing federal or state administrative law requirements.

Several commenters opposed the prioritization of the activities-based approach, based on various legal, procedural, analytical, and other objections. Some commenters noted that the Council does not have authority to regulate financial activities, or stated that the proposal to rely on primary regulators to address potential risks has no basis in the Dodd-Frank Act. One commenter stated that Congress did not intend the Council's designation authority to be subordinate to or contingent upon an activities-based approach, and two other commenters stated that the Council's authority to make recommendations under section 120 of the Dodd-Frank Act cannot serve as a substitute for designations under section 113. One commenter stated that the Council's analysis should begin with an activities-based approach, but that the activities-based approach should not be undertaken at the expense of designation, which the commenter stated is an important tool that should be used when warranted.

The Dodd-Frank Act gives the Council broad discretion to determine how to respond to potential threats to U.S. financial stability. The activities-based approach is consistent with the Council's priorities of identifying and addressing potential risks and emerging threats on a system-wide basis, allowing relevant financial regulatory agencies to address identified potential risks. The Council retains the authority to designate nonbank companies under the Final Guidance. The Council recognizes that its authority under section 120 of the Dodd-Frank Act is not a substitute for designations in all circumstances. However, consistent with the Council's prioritization of an activities-based approach, the Council's authority under section 120 may be a more effective means of addressing certain types of potential risks than designating one or more individual companies.

Two commenters stated that the activities-based approach cannot address risks that are tied to the funding and leverage or combination of activities within a specific firm. Another commenter stated that the Federal Reserve's regulatory authorities with respect to designated nonbank financial companies, such as capital and liquidity requirements, risk management requirements, and stress testing, are not available through an activities-based approach. In the activities-based approach, the Council anticipates identifying risks from activities such as the use of leverage, and working with relevant financial regulatory agencies to respond to identified risks. The Council expects that in many cases, relevant financial regulatory agencies will have authority to address risks identified by the Council in the activities-based approach. However, if a potential threat to U.S. financial stability cannot be adequately addressed through an activities-based approach, the Council may consider a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act.

One commenter stated that although the Proposed Guidance suggests that the activities-based approach will minimize competitive distortions that arise from firm-specific decisions, large, systemically important firms actually create competitive distortions, because of the perception that they will receive a bailout in a situation where their failure could create systemic risk.

[13] References in this preamble and guidance to ''relevant financial regulatory agencies'' may encompass a broader range of regulators than those included in the statutory definition of ''primary financial regulatory agency.'' *See* Dodd-Frank Act section 2(12), 12 U.S.C. 5301(12).

[14] For example, the Council's 2018 annual report noted risks such as cybersecurity events associated with the increased use of information technology, the concentrations of activities and exposures in central counterparties, and transition issues related to the move away from LIBOR to an alternative, sustainable reference rate.

Another commenter stated that competitive market distortions are not among the statutory factors that the Council is required to consider when evaluating specific companies for a determination. One of the Council's priorities is to identify and address potential risks and emerging threats to financial stability on a system-wide basis, which, in turn, reduces the potential for competitive market distortions that could arise from entity-specific determinations. The activities-based approach is consistent with this system-wide perspective.

One commenter objected to the activities-based approach on the basis that it is easier for regulators to identify systemic firms *ex ante* than to predict which activities will threaten financial stability. Another commenter stated that jurisdictional gaps will impede the activities-based approach, including with respect to insurance companies, hedge funds, and nonbank financial technology companies. By leveraging the expertise and regulatory authorities of relevant financial regulatory agencies as part of its collaborative engagement in the activities-based approach, the Council expects to identify products, activities, and practices that may raise concerns and effectively address any jurisdictional gaps. Council members can, at their discretion, raise potential risks for consideration by the Council, including with respect to risks that are, or are migrating, outside a particular regulator's jurisdiction. Another commenter stated that the activities-based approach will incentivize firms to engage in regulatory arbitrage by seeking out activities that have not been identified or appropriately regulated. However, actions taken to address potential risks across an entire industry or market under the activities-based approach may be more effective in discouraging regulatory arbitrage than company-specific determinations under section 113. Two commenters stated that it would not be possible for the Council to undertake an activities-based approach effectively, given the reduction in funding and staff for the Office of Financial Research (OFR). The Council has confidence that Council members and member agencies, including the OFR, will be able to conduct the market monitoring, risk identification, information sharing, and analysis contemplated by the activities-based approach.

2. First Step of Activities-Based Approach

The Final Guidance establishes a two-step process for the Council's activities-based approach. In the first step, in an effort to identify potential risks to U.S. financial stability, the Council intends to monitor diverse financial markets and market developments, in consultation with relevant financial regulatory agencies, to identify products, activities, or practices that could pose risks to financial stability.[15] The Council intends to continue to monitor a broad scope of financial markets and market developments, which may include corporate and sovereign debt and loan markets, equity markets, new or evolving financial products, activities, and practices, and developments affecting the resiliency of financial market participants. If the Council's monitoring of markets and market developments identifies a product, activity, or practice that could pose a potential risk to U.S. financial stability, the Council, in consultation with the relevant financial regulatory agencies, will evaluate the potential risk to determine whether it merits further review or action. The Final Guidance defines a ''risk to financial stability'' as a risk of an event or development that could impair financial intermediation or financial market functioning to a degree that would be sufficient to inflict significant damage on the broader economy.[16] One commenter stated that the Council should amend the proposed definition of ''risk to financial stability'' by evaluating the impact and likelihood of a potential risk, among other attributes. The definition in the Final Guidance is unchanged from the proposal, because the definition already addresses the scale of the risk by reference to the impact on the broader economy. The likelihood of the risk arising is more relevant to the consideration of any appropriate regulatory response than to this definition.

In its analysis in the first step of the activities-based approach, the Council will evaluate the extent to which certain characteristics could amplify potential risks to U.S. financial stability arising from products, activities, or practices. While these characteristics may not themselves present risks to U.S. financial stability, the Council will consider whether the combination or prominence of such characteristics in the products, activities, or practices under evaluation warrants further scrutiny. Such characteristics include asset valuation risk or credit risk; leverage, including leverage arising from debt, derivatives, off-balance sheet obligations, and other arrangements; and the transparency of financial markets, such as growth in financial transactions occurring outside of regulated sectors, among others. When evaluating the potential risks associated with a product, activity, or practice, the Council will take into account these characteristics and various other factors that may exacerbate or mitigate the risks. For example, activities may pose greater risks if they are complex or opaque, are conducted without effective risk-management practices, are significantly correlated with other financial products, or are either highly concentrated or significant and widespread. A trading activity in a market subject to a significant amount of asset valuation risk, for instance, may pose a greater threat to financial stability if the activity is also opaque. In contrast, regulatory requirements or market practices may mitigate risks by, for example, limiting exposures or leverage, enhancing risk-management practices, or restricting excessive risk-taking. Regulatory requirements associated with a lending activity, such as an asset concentration limit or repayment test, may reduce the potential risk to financial stability stemming from the activity. Council members can, at their discretion, raise potential risks for consideration by the Council, including with respect to risks that are, or are migrating, outside a particular regulator's jurisdiction.

Commenters offered numerous views regarding the proposed analytical components of the first step of the activities-based approach. Several commenters stated that the Final Guidance should take into account existing regulations implemented since the financial crisis, or consider the existing regulatory framework and work with the primary regulator to harmonize an approach to evaluating risk. As discussed below, the Final Guidance has been revised to make clear that the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. One commenter stated that the Council should tailor regulation to firms' risk profiles. The Council itself does not adopt financial services regulations, but it expects that actions that relevant financial regulatory agencies take to address potential risks to financial stability will be tailored to respond effectively and efficiently to the relevant risk. Further, the Final Guidance has

[15] The Council has a statutory duty to monitor the financial services marketplace in order to identify potential threats to U.S. financial stability. *See* Dodd-Frank Act section 112(a)(2)(C), 12 U.S.C. 5322(a)(2)(C).

[16] The 2012 Final Rule and Interpretive Guidance did not define ''risk to financial stability.''

been revised to state that the Council will take into account the risk profiles and business models of market participants engaging in the products, activities, or practices under evaluation.

Other commenters recommended that the Council further specify how it will analyze potential risks in the activities-based approach, such as by clarifying the criteria or standards the Council will apply, or establishing an empirical connection between an identified risk and measures to address the risk. As discussed below, the Final Guidance has been revised to make clear that the Council will consider available evidence regarding the potential risk and the behavior of financial market participants. At the same time, empirical data may not be available regarding all potential risks, and the type and scope of the Council's analysis will be tailored to the potential risk under consideration.

Several commenters provided recommendations on the types of risks that the Council should focus on. Commenters stated that the Council should focus on new or emerging risks, or on substantially changed activities. Other commenters stated that the Council should focus on risks such as: Key service providers or market participants that could introduce new threats; cross-jurisdictional risks; or historical sources of financial disruptions. The Council expects that such risks and activities will be reviewed as part of the activities-based approach. One commenter stated that the activities-based approach should consider risks from sovereign entities, central banks, government agencies, and cyber threats. The activities-based approach will be sufficiently flexible to enable the Council to consider any relevant risks that may arise from these sources. One commenter stated that the Council should consider how to address risks that arise rapidly and require an expedited response from the Council and regulators. The Council will act expeditiously, as appropriate, to address emerging risks to financial stability.

One commenter stated that the Council should solicit public comment when identifying potential risks during the activities-based approach. During the activities-based approach, the Council will engage extensively with relevant financial regulatory agencies, which are generally in close contact with market participants and other stakeholders. In addition, the Final Guidance notes that the Council may engage with industry participants and other members of the public as it assesses potential risks. Further, as described below, if the Council proposes to issue recommendations under section 120 of the Dodd-Frank Act, the Council will provide public notice and an opportunity to comment on proposed recommendations in accordance with its statutory obligations.

Several commenters raised considerations specific to certain industries. One commenter stated that insurance is not inherently a source of systemic risk and can be an effective tool of risk mitigation. Another commenter stated that property and casualty insurers do not create systemic risk due to their low levels of leverage and liquidity risk.

Several commenters discussed the application of the activities-based approach to the asset management industry. Commenters stated that private equity and private credit do not pose risks to financial stability, and highlighted the existing federal regulation of such firms. Another commenter stated that the Final Guidance should state that there is no historical evidence demonstrating that traditional asset management activities have threatened U.S. financial stability. One commenter stated that when the Council evaluates leverage in the investment funds sector, it should defer to existing regulation regarding funds' asset segregation and derivatives use.

One of the priorities of the activities-based approach is to allow relevant financial regulatory agencies, which generally possess greater information and expertise with respect to company, product, and market risks, to address potential risks, rather than subjecting companies to new regulatory authorities. The Council believes that this approach will enable the Council, working together with financial regulatory agencies, to appropriately consider specific attributes of particular industries, business models, and existing regulatory frameworks, including the factors highlighted in the public comments regarding insurance and asset management.

Several commenters provided additional views regarding the Council's analysis of specific risk factors. One commenter stated that the activities-based approach should consider risks and mitigants for each relevant industry, since each industry has distinct risk-mitigation techniques. Another commenter stated that leverage alone does not equal risk, and that some leverage can decrease risk. One commenter stated that the Final Guidance should distinguish between investor protection concerns and financial stability concerns. The Council expects to collaborate with relevant financial regulatory agencies when evaluating the extent to which certain characteristics could amplify potential risks to U.S. financial stability arising from products, activities, or practices. Such characteristics include leverage, such as leverage arising from debt, derivatives, off-balance sheet obligations, and other arrangements. The Council will give due consideration to the attributes of particular risks during this collaboration.

One commenter stated that the Council should regularly survey financial firms on their sources of short-term funding. While the Council does not believe it is appropriate at this time to impose this additional reporting requirement on market participants, the Council will regularly rely on a wide range of data, research, and analysis from Council member agencies, the OFR, and public sources to inform its actions.

3. Four Framing Questions in First Step of Activities-Based Approach

The Council's analysis in the first step of the activities-based approach will generally focus on four framing questions, which analyze (1) triggers of potential risks (for example, sharp reductions in the valuation of particular classes of financial assets or significant credit losses); (2) how adverse effects of the potential risk may be transmitted to financial markets or market participants (for example, through direct or indirect exposures in financial markets to the potential risk or funding or trading pressures that may result from associated declines in asset prices); (3) the effects the potential risk could have on the U.S. financial system (for example, the scale and magnitude of adverse effects on other companies and markets, and whether such effects could be concentrated or diffused among market participants); and (4) whether the adverse effects of the potential risk could impair the U.S. financial system in a manner that could harm the non-financial sector of the U.S. economy (for example, through curtailed or interrupted provision of credit to non-financial companies).

Commenters that expressed a view on the four framing questions generally supported the proposed framework, in some cases with suggestions for additional factors or steps the Council should consider. Two commenters stated that the Council should consult with primary regulators regarding new dynamics that could fuel a financial crisis, such as risks that start in the broader economy and propagate to the financial system. Another commenter stated that the Council should provide

more detail on how it will analyze data under the four framing questions. In addition, three commenters stated that the Council's analysis under the four framing questions should be based on empirical and historical evidence. The Final Guidance has been revised to clarify that in its evaluation of the four framing questions, the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. The Council will also take into account the risk profiles and business models of market participants engaging in the products, activities, or practices under evaluation. The Council will consider available evidence regarding potential risks. However, the Final Guidance notes that empirical data may not be available regarding all potential risks, and the type and scope of the Council's analysis will be tailored to the potential risk under consideration.

Several other commenters stated that the analysis under the four framing questions should include an assessment of the likelihood, significance, dollar value, or magnitude of a potential risk to financial stability. The Council expects that the scale of the adverse effects a potential risk could have on companies and markets will be part of its evaluation under the four framing questions—particularly the third question, regarding the effects the potential risk could have on the U.S. financial system. However, the Council does not intend to introduce a separate assessment of the likelihood of a particular risk, which could unnecessarily restrict its ability to evaluate the framing questions.

4. Second Step of Activities-Based Approach

If the Council identifies a potential risk to U.S. financial stability in step one of the activities-based approach, then in the second step, the Council will work with the relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to address the identified potential risk.[17] The goal of this step is for these regulators to take appropriate actions such as modifying their regulation or supervision of companies or markets under their jurisdiction in order to mitigate potential risks to U.S. financial stability identified by the Council. Measures that regulators can take to address a particular risk may vary widely, based on their authorities and the urgency of the risk. The Council will seek to take advantage of these regulators' expertise and their regulatory and supervisory authorities to address the potential risk identified by the Council. Two commenters stated that the Council should vote on advancing from step one to step two of the activities-based approach. Because of the continued preliminary nature of any analysis and interagency collaboration at the outset of step two, the Council is not adopting a requirement to hold a vote at that time.

The Council expects that much of its initial identification and assessment of risks, and engagement with regulators, will be informal and nonpublic in nature. The staffs of Council members and member agencies will be responsible for much of the market monitoring, risk identification, information sharing, and analysis in the activities-based approach. This engagement may yield a range of diverse outcomes, including the sharing of data, research, and analysis among the Council and regulators, or the public issuance of recommendations by the Council in its annual reports. Potential risks that merit further attention may be raised at meetings of the Council members or with other stakeholders, and, as appropriate, may result in public statements or recommendations by the Council, as described above.

The Council anticipates that appropriate measures it may take to address an identified potential risk will also typically take the form of relatively informal actions, such as information sharing among regulators, but as deemed appropriate could also include more formal measures, such as the Council's public issuance of recommendations to regulators or the public. Such recommendations could be made in the Council's annual report. Alternatively, if after engaging with relevant financial regulatory agencies, the Council finds that those regulators' actions are inadequate to address the identified potential risk to U.S. financial stability, the Council has authority under section 120 of the Dodd-Frank Act to ''provide for more stringent regulation of a financial activity'' by publicly issuing nonbinding recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their jurisdictions.[18] The Council's authority under section 120 of the Dodd-Frank Act is discussed below.

Several commenters provided views regarding the Council's process and engagement with primary regulators in the activities-based approach. One commenter stated that the Council should separate responsibility among the Council staff for investigating an activity from responsibility for determining that the activity poses a systemic risk. The Council has limited staff and also relies on the resources of its members and member agencies, and therefore does not propose to restructure its staff in this manner. Two commenters stated that the Council should rely as much as possible on public or existing regulatory data. The Council will regularly rely on data, research, and analysis from Council member agencies, the OFR, industry participants, and other public sources to inform its actions. Consistent with its statutory obligations, the Council will, whenever possible, rely on information available from the OFR or primary financial regulatory agencies before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or primary financial regulatory agency.[19] One commenter stated that the Council should report publicly on its activities-based approach evaluations and other Council activities, and include this reporting in the Council annual report. The issues the Council is likely to consider in the activities-based approach are often discussed in the Council's annual reports. In the event the Council issues recommendations in connection with the activities-based approach, such recommendations could also be made in the Council's annual report, which includes the Council's recommendations to enhance the integrity, efficiency, competitiveness, and stability of U.S. financial markets, to promote market discipline, and to maintain investor confidence.

One commenter stated that the Council should consider whether new regulatory requirements could have an unintended adverse impact on financial stability. The Council will coordinate among its members and member agencies and will follow up on supervisory or regulatory actions to ensure the potential risk is adequately addressed, with due consideration for

[17] The Council has a statutory duty to ''recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies.'' *See* Dodd-Frank Act section 112(a)(2)(F), 12 U.S.C. 5322(a)(2)(F).

[18] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

[19] *See* Dodd-Frank Act section 112(d)(3)(B), 12 U.S.C. 5322(d)(3)(B).

any identified, unintended adverse impact.

One commenter stated that the Council should further clarify the process it will follow during the activities-based approach. The Council believes the process set forth in the Final Guidance provides an appropriate level of specificity while also permitting sufficient flexibility for informal collaboration among financial regulators to identify, assess, and address potential risks. One commenter stated that the Council should publicly issue a written provisional determination regarding any identified potential risk to financial stability. The Council's collaboration with relevant financial regulatory agencies in the activities-based approach may yield a range of diverse outcomes, including the sharing of data, research, and analysis among the Council and these regulators, or the public issuance of recommendations by the Council in its annual reports. The approach described in the Final Guidance will enable robust analysis and collaboration, without unduly restricting the Council's ability to respond to potential risks to U.S. financial stability.

A number of commenters provided recommendations about the Council's engagement with regulators or industry stakeholders in the activities-based approach. Several commenters stated that engagement with primary regulators and companies should be a key component of the activities-based approach, and another stated that the Council should strengthen the role of the primary regulator in activities-based approach step one, with a presumption supporting the primary regulator's findings. The Final Guidance makes clear that the Council will seek to take advantage of existing regulators' expertise and regulatory authorities to address any potential risk identified by the Council during the activities-based approach. One commenter stated that the Council should communicate with the primary regulator about existing regulations applicable to companies engaged in financial activities that may be evaluated in connection with the activities-based approach, any possible changes to such regulations, and whether it can address the identified risk on an industry-wide basis. As discussed above, the Final Guidance has been revised to clarify that in its evaluation, the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. Several commenters stated that the Council should coordinate with various other parties during the activities-based approach, including state insurance regulators, the National Association of Insurance Commissioners (NAIC), and other industry stakeholders. If the Council identifies a potential risk to U.S. financial stability in step one of the activities-based approach, then in the second step, the Council will work with the relevant financial regulatory agencies, including state regulators, to seek the implementation of appropriate actions to address the identified potential risk.

Several commenters stated that the Council or the relevant primary regulator should undertake a cost-benefit analysis in connection with the activities-based approach. Because the Council will not itself be adopting regulations or taking supervisory actions to address potential risks to U.S. financial stability identified in the activities-based approach, a cost-benefit analysis by the Council during the activities-based approach would not generally be appropriate. In addition, several commenters recommended that the Council undertake a cost-benefit analysis in connection with any recommendation the Council may issue under section 120 of the Dodd-Frank Act. As described below, the Council made changes to the Final Guidance in response to these comments, because it has determined that such an analysis would increase the rigor of the Council's recommendations under section 120.

5. Recommendations Under Section 120 of the Dodd-Frank Act

Under section 120 of the Dodd-Frank Act, the Council has authority to ''provide for more stringent regulation of a financial activity'' by publicly issuing nonbinding recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by certain financial companies.[20]

The authority to issue recommendations to primary financial regulatory agencies under section 120 is one of the Council's most formal tools for responding to potential risks to U.S. financial stability. Given the importance of this tool, and consistent with the public comments on the Proposed Guidance, the Council believes that a cost-benefit analysis should be performed and made public in connection with any recommendations issued under section 120. The Final Guidance has been revised to provide additional clarity on the process by which the Council may issue recommendations under section 120, and how the costs and benefits associated with such recommendations will be analyzed. Consistent with section 120, the Council will make these recommendations only if it determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.

In its recommendations under section 120, the Council may suggest broad approaches to address the risks it has identified. When appropriate, the Council may make a more specific recommendation. To promote analytical rigor and avoid duplication, before making any recommendation under section 120, the Council will ascertain whether the relevant primary financial regulatory agency would be expected to perform a cost-benefit analysis of the actions it would take in response to the Council's contemplated recommendation. In cases where the primary financial regulatory agency would not be expected to conduct such an analysis, the Council itself will—prior to making a final recommendation—conduct an analysis, using empirical data, to the extent available, of the benefits and costs of the actions that the primary financial regulatory agency would be expected to take in response to the contemplated recommendation. Where the Council conducts its own such analysis, the specificity of its assessment of benefits and costs would be commensurate with the specificity of the contemplated recommendation. In general, such an assessment by the Council will include a consideration of the benefits and costs to market participants and to the U.S. financial system and long-term economic growth. Where the Council conducts its own analysis, the Council will make a recommendation under section 120 only if it believes that the results of its assessment of benefits and costs support the recommendation.

Primary financial regulatory agencies have significant experience, knowledge, and expertise that can be useful in determining the most efficient way to address a particular risk within their regulatory jurisdiction. In every case, prior to issuing a recommendation under section 120, the Council will consult with the relevant primary financial regulatory agency and provide

[20] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

notice to the public and opportunity for comment as required by section 120.

In any case in which no primary financial regulatory agency exists for one or more nonbank financial companies conducting financial activities or practices identified by the Council as posing risks, the Council can consider reporting to Congress on recommendations for legislation that would prevent such activities or practices from threatening U.S. financial stability.[21] The Council intends to make recommendations under section 120 of the Dodd-Frank Act only to the extent that its recommendations are consistent with the statutory mandate of the relevant primary financial regulatory agency.

One commenter stated that the Council should use its authority under section 120 of the Dodd-Frank Act after informal and nonpublic actions have been tried and deemed insufficient. As noted above, if the Council, after engaging with relevant financial regulatory agencies, believes those regulators' actions are inadequate to address an identified potential risk to U.S. financial stability, the Council may make formal public recommendations to primary financial regulatory agencies under section 120. Another commenter stated that the consent of the primary financial regulatory agency should be required before the Council issues a recommendation under section 120. The Council expects to issue recommendations under section 120 only after engaging with relevant financial regulatory agencies, but the primary financial regulatory agency's consent is not required under section 120, and the Council believes that its consultation with regulators will be more effective than the commenter's proposed restriction on the Council's discretion.

6. Transition From Activities-Based Approach to Determination Process

The Proposed Guidance stated that if the activities-based approach did not adequately address a potential risk identified by the Council, the Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act.

Commenters provided various recommendations on the procedural steps that should be required for the Council to advance beyond the activities-based approach and commence an evaluation of a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act. One commenter requested that the Council clarify that the activities-based approach is distinct from the determination process. The Final Guidance reflects the fact that the process for evaluating a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act is distinct from the process for an activities-based approach under section 112 of the Dodd-Frank Act. Commenters made a number of comments intended to ensure that sufficient analysis is conducted in the activities-based approach before the Council initiates a designation analysis. One commenter stated that before considering a nonbank financial company for a potential determination, the Council should explain in writing the empirical basis why the activities-based approach is insufficient. Several other commenters stated that the Council should only move from the activities-based approach to a designation analysis if the primary regulator of the relevant nonbank financial company states in writing that it cannot address the risk through an activities-based approach. Other commenters recommended that the Council and relevant primary regulator prepare a list of the regulator's findings in connection with the transition from the activities-based approach to a designation analysis and that the Council should make a ''written finding'' that it is moving to a designation analysis.

The Proposed Guidance stated that the Council or its Deputies Committee would vote to commence review of a nonbank financial company in Stage 1. Several commenters stated that the Council should vote on any decision to commence the review of a nonbank financial company for a potential determination, and that such a vote should not be delegable to the Deputies Committee. In light of the significance of a Council determination, the Council agrees with these comments. Accordingly, the Final Guidance has been revised to provide that the Council will vote to commence review of a nonbank financial company in Stage 1. The Council's vote before considering a nonbank financial company for a potential determination will help ensure that sufficient analysis has been conducted in the activities-based approach.[22]

C. Analytic Framework for Nonbank Financial Company Determinations

The Proposed Guidance stated that the Council expects to advance beyond the activities-based approach, and evaluate a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act, only in a limited set of circumstances—namely, if (1) the Council's collaboration and engagement with the relevant financial regulatory agencies using an activities-based approach does not adequately address the potential risk identified by the Council, or if the potential threat to U.S. financial stability is outside the jurisdiction or authority of financial regulatory agencies, and (2) the potential threat identified by the Council is one that could be addressed by a Council determination regarding one or more nonbank financial companies. Two commenters stated that the Final Guidance should be modified to state that the Council may consider a nonbank financial company for a potential determination only if a potential threat ''can only be adequately addressed'' through designation. While the Council believes that the commenters' proposed language would unduly restrict the Council's ability to respond to potential threats to financial stability, the Final Guidance has been revised, with respect to clause (2) above, to add that the Council will only evaluate a company for a designation if the potential threat identified is one that could be effectively addressed by a Council determination.

Following is a description of the substantive analysis the Council would undertake regarding any nonbank financial company under review for a potential determination.

1. Statutory Standards and Considerations

Title I of the Dodd-Frank Act defines a ''nonbank financial company'' as a domestic or foreign company that is ''predominantly engaged'' in ''financial activities,'' other than bank holding companies and certain other types of firms.[23] The Dodd-Frank Act provides that a company is ''predominantly engaged'' in financial activities if either (1) the annual gross revenues derived by the company and all of its subsidiaries from financial activities, as well as from the ownership or control of insured depository institutions, represent 85 percent or more of the consolidated annual gross revenues of the company; or (2) the consolidated assets of the

[21] *See* Dodd-Frank Act section 120(d)(3), 12 U.S.C. 5330(d)(3).

[22] See also the chart of Council votes that would occur at significant transition points in the Council's analysis, in section II(A)(2) above.

[23] *See* Dodd-Frank Act section 102(a)(4), 12 U.S.C. 5311(a)(4).

company and all of its subsidiaries related to financial activities, as well as related to the ownership or control of insured depository institutions, represent 85 percent or more of the consolidated assets of the company.[24] The Dodd-Frank Act requires the Federal Reserve to establish the requirements for determining whether a company is ''predominantly engaged in financial activities'' for this purpose.[25]

Section 113 of the Dodd-Frank Act authorizes the Council to subject a nonbank financial company to supervision by the Federal Reserve and prudential standards if the Council determines that (1) material financial distress at the nonbank financial company could pose a threat to U.S. financial stability (the ''First Determination Standard''), or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability (the ''Second Determination Standard''). The analytic framework in the Final Guidance focuses primarily on the First Determination Standard, because risks to financial stability (such as asset fire sales or financial market disruptions) are most commonly propagated through a nonbank financial company when it is in distress.

The Council is statutorily required to take into account the following considerations in making a determination under section 113 of the Dodd-Frank Act:[26]

- The extent of the leverage of the company;
- The extent and nature of the off–balance-sheet exposures of the company;
- The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;
- The importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the U.S. financial system;
- The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
- The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;
- The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;
- The degree to which the company is already regulated by one or more primary financial regulatory agencies;
- The amount and nature of the financial assets of the company;
- The amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and
- Any other risk-related factors that the Council deems appropriate.

One commenter stated that the Council should make clear that designation of certain entities, like mutual funds and their managers, is inappropriate. Another commenter stated that designation is the wrong approach for capital markets firms, because it applies rules designed for banks to non-banks. Several commenters stated that the Federal Reserve should exempt from designation certain types of nonbank financial companies that do not exhibit certain risk factors, pursuant to section 170 of the Dodd-Frank Act. The Council does not intend to provide industry-based exemptions from potential determinations under section 113 of the Dodd-Frank Act. The Council would evaluate industry- or firm-specific factors as part of the assessment of any nonbank financial company for potential designation. Therefore, based on these comments, the Final Guidance has been revised to make clear that the information relevant to an in-depth analysis of a nonbank financial company may vary based on the nonbank financial company's characteristics. One commenter stated that the Council should consider how the enhanced prudential standards that apply to designated nonbank financial companies should be tailored to specific types of nonbank financial companies. The Council has statutory authority to make recommendations to the Federal Reserve concerning the establishment and refinement of prudential standards and other requirements applicable to designated nonbank financial companies;[27] the Council may consider, at a future date, whether to issue such recommendations.

Several other commenters generally opposed to the proposal stated that the Council's designation authority is a vital tool that should not be de-emphasized in favor of the activities-based approach. One commenter stated that Congress intended that designation be the mandatory and primary mechanism for addressing risks to financial stability. Another stated that the Proposed Guidance imposed conditions that conflicted with section 113 of the Dodd-Frank Act. Several commenters stated that the proposed changes would make designation unworkably lengthy, or would preclude its use to address potential risks in advance of an emergency. Other commenters made similar arguments regarding the benefits of nonbank financial company designations. The Final Guidance is intended to ensure that the Council's work is clear, transparent and analytically rigorous, and to enhance the Council's engagement with companies, regulators, and other stakeholders. By issuing clear and transparent guidance, the Council seeks to provide the public with sufficient information to understand the Council's concerns regarding risks to U.S. financial stability, while appropriately protecting information submitted by companies and regulators to the Council. The Final Guidance does not prohibit the Council from considering a nonbank financial company for potential designation, in appropriate circumstances. The Final Guidance makes clear that the Council may pursue entity-specific determinations under section 113 of the Dodd-Frank Act if a potential risk or threat cannot be adequately addressed through an activities-based approach. The Council anticipates it would consider a nonbank financial company for a potential determination under section 113 only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies. Further, the Final Guidance does not limit the ability of the Council to waive or modify the procedural requirements related to nonbank financial company designations if the Council determines that such action is necessary or appropriate to prevent or mitigate threats posed by a nonbank financial company to U.S. financial stability.[28]

The Final Guidance clarifies several terms used in the Dodd-Frank Act that are not defined in the Act, including ''company,'' ''material financial distress,'' and ''threat to the financial stability of the United States.'' The Final Guidance defines ''threat to the

[24] *See* Dodd-Frank Act section 102(a)(6), 12 U.S.C. 5311(a)(6).

[25] *See* Dodd-Frank Act section 102(b), 12 U.S.C. 5311(b). The Federal Reserve published a final rule in April 2013 establishing the requirements for determining if a company is ''predominantly engaged in financial activities.'' *See* 12 CFR 242.3.

[26] *See* Dodd-Frank Act section 113(a)(2), 12 U.S.C. 5323(a)(2). This list reflects the statutory considerations applicable to a determination with respect to a U.S. nonbank financial company. The Council is required to consider corresponding factors in making a determination with respect to a foreign nonbank financial company.

[27] *See* Dodd-Frank Act section 115, 12 U.S.C. 5325.

[28] *See* Dodd-Frank Act section 113(f), 12 U.S.C. 5323(f), 12 CFR 1310.22.

financial stability of the United States'' by reference to the potential for ''severe damage on the broader economy,'' in contrast to the definition in the 2012 Interpretive Guidance, which refers to ''significant'' damage. The Council intends to interpret the term ''company'' to include any corporation, limited liability company, partnership, business trust, association, or similar organization.[29] The Proposed Guidance stated that the Council intends to interpret ''nonbank financial company'' as including any successor of a company that is subject to a final determination of the Council. Several commenters stated that the Council should either eliminate the ''successor'' language, or limit successors to those entities that succeed to substantially all the designated company's assets and liabilities.

The Council agrees with commenters that the proposed interpretation of ''nonbank financial company'' was overly broad. The Final Guidance has therefore been revised to narrow the proposed interpretation and further clarify which entity would be subject to a Council determination in the event of a sale that involves the transfer of a majority, but not all, of a designated nonbank financial company's assets or liabilities. The Final Guidance states that the Council intends to interpret the statutory term ''nonbank financial company supervised by the Board of Governors'' as including any nonbank financial company that acquires, directly or indirectly, a majority of the assets or liabilities of a company that is subject to a final determination of the Council. As a result, if a nonbank financial company subject to a final determination of the Council sells or otherwise transfers a majority of its assets or liabilities, the acquirer, rather than the remaining small entity, will succeed to and become subject to the Council's determination.[30] This new definition has the benefit of clarity, because it relies on a simple balance sheet-related test to determine whether an entity succeeds to, and becomes subject to, a Council determination. This definition also makes clear that the acquirer of a minority of a designated nonbank financial company's assets or liabilities will not be deemed to become subject to the Council determination. At the request of the designated nonbank financial company, the Council may engage in discussions with the company to evaluate the structure of any transaction involving a potential successor. Further, as discussed in section V of the Final Guidance, a nonbank financial company that is subject to a final determination of the Council may request a reevaluation of the determination before the next required annual reevaluation, in appropriate cases. The Final Guidance has been revised to make clear that if a nonbank financial company subject to a final determination of the Council sells or otherwise transfers a majority of its assets or liabilities, the acquirer can use this reevaluation process to seek a rescission of the determination upon consummation of its transaction.

Several commenters stated that the Council should add specificity regarding certain definitions in the Proposed Guidance, such as ''impairment of financial intermediation or of financial market functioning,'' ''severe damage on the broader economy,'' ''overall stress in the financial services industry,'' and ''weak macroeconomic environment.'' The Council believes that these definitions accurately reflect the statutory requirements and the nature of the threat that the Council's authority under the Dodd-Frank Act seeks to mitigate. Attempting to define them with greater specificity could unacceptably limit the Council's discretion in a situation that is not precisely foreseeable.

The Council received a number of comments regarding its analysis in the designation context. One commenter stated that the Council should defer to the nonbank financial company's primary regulator during the analysis, and another stated that the Council should provide a key role on the Council analytic team to staff of the primary regulator, and solicit input from industry and academic economists. The Council will consult with a company's primary financial regulatory agency (if any) when assessing a company for potential designation. A company under review in Stage 1 or Stage 2 may voluntarily submit to the Council any information it deems relevant to the Council's evaluation. In consideration of the benefits that the Council will derive from extensive engagement with a company's primary financial regulatory agency, the Council will actively solicit the regulator's views regarding risks at the company and potential means to mitigate those risks, and will share its preliminary views regarding potential risks at the company with the regulator. During the determination process, the Council will continue to encourage the regulator to address relevant risks using the regulator's existing authorities.

Other commenters provided specific analytical recommendations to the Council, including that the Council should consider market risks in conjunction with the analysis of a nonbank financial company's liquidity risk; the Council should assess the ability of financial markets to absorb asset fire sales; and, when analyzing leverage, the Council should distinguish between long and short exposures. The Council has not revised the Final Guidance to address these comments but intends to consider such factors in its analyses as appropriate.

2. Transmission Channels

The Final Guidance explains that the Council's evaluation of a nonbank financial company for a potential determination will focus primarily on how the negative effects of the company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could be transmitted to or affect other firms or markets, thereby causing a broader impairment of financial intermediation or of financial market functioning. The Council has identified three transmission channels as most likely to facilitate the transmission of these negative effects. These transmission channels are: (1) The exposure transmission channel; (2) the asset liquidation transmission channel; and (3) the critical function or service transmission channel. While these transmission channels were also described in the 2012 Interpretive Guidance, the Final Guidance substantially enhances and clarifies the Council's analyses under these three channels. The Council may also consider other relevant channels through which risks could be transmitted from a particular nonbank financial company and thereby pose a threat to U.S. financial stability.

a. Exposure Transmission Channel

Under the exposure transmission channel, the Council will evaluate whether a nonbank financial company's creditors, counterparties, investors, or other market participants have direct or indirect exposure to the nonbank financial company that is significant enough to materially and adversely affect those or other creditors, counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability. Among

[29] The statutory definition of ''nonbank financial company'' excludes bank holding companies and certain other types of companies. Dodd-Frank Act section 102(a)(4), 12 U.S.C. 5311(a)(4).

[30] In narrowing and clarifying its interpretation of ''nonbank financial company supervised by the Board of Governors,'' the Council is guided by general principles of corporate law under which an acquirer of another company's assets may be liable for obligations of the seller in certain situations, including if the purchaser is merely a continuation of the seller.

other factors, the Council expects to evaluate the amounts of exposures, the degree of protection for the counterparty under the terms of transactions, whether the largest counterparties include large financial institutions, and the company's leverage and size. The Council will also consider the exposures that counterparties and other market participants have to a nonbank financial company arising from the company's capital markets activities. The Council expects to consider a variety of factors in connection with this analysis, such as the amount and nature of, and counterparties to, the company's outstanding debt (regardless of term) and other liabilities, derivatives transactions (which may be measured on the basis of gross notional amount, net fair value, or potential future exposures), and securities financing transactions, among others. The Council will also consider applicable factors, including existing regulatory requirements, that may mitigate potential risks under the exposure transmission channel. The Final Guidance notes that the Council will consider the extent to which assets are managed rather than owned by the company, in recognition of the distinct nature of exposure risks when the company is acting as an agent rather than as principal. In particular, in the case of a nonbank financial company that manages assets on behalf of customers or other third parties, the third parties' direct financial exposures are often to the issuers of the managed assets, rather than to the nonbank financial company managing those assets. Finally, the Council will evaluate the potential for contagion in conjunction with other factors summarized above when evaluating risk under this channel. As part of this assessment, the Council will consider relevant industry-specific historical examples, the scope of the company's interconnectedness with large financial institutions, and market-based or regulatory factors that may mitigate the risk of contagion, among other factors.

b. Asset Liquidation Transmission Channel

Under the asset liquidation transmission channel, the Council will consider whether a nonbank financial company holds assets that, if liquidated quickly, could pose a threat to U.S. financial stability by, for example, causing a fall in asset prices that significantly disrupts trading or funding in key markets or causes significant losses or funding problems for other firms with similar holdings. The Council may also consider whether a deterioration in asset pricing or market functioning could pressure other financial firms to sell their holdings of affected assets in order to maintain adequate capital and liquidity, which, in turn, could produce a cycle of asset sales that could lead to further market disruptions. The Council will also consider the extent to which assets are managed rather than owned by the company. The Council's analysis of the asset liquidation transmission channel will focus on three central factors: (1) Liquidity of the company's liabilities; (2) liquidity of the company's assets; and (3) potential fire sale impacts.

When analyzing the liquidity of the company's liabilities, the Council will assess the company's liquidity risk by reviewing factors such as the company's short-term financial obligations, financial arrangements that can be terminated by counterparties and therefore become short-term, and long-term liabilities that may come due in a short-term period, among other factors. The Council will also evaluate the company's leverage (for example, by assessing total assets and total debt measured relative to total equity, and derivatives liabilities and off-balance sheet obligations relative to total equity), as well as the company's short-term debt ratio. When analyzing the liquidity of the company's assets, the Council will consider which assets the company could rapidly liquidate, if necessary, to satisfy its obligations. Finally, when analyzing potential fire sale impacts, the Council will consider the potential effects of the company's asset liquidation on markets and market participants.

c. Critical Function or Service Transmission Channel

Finally, under the critical function or service transmission channel, the Council will consider the potential for a nonbank financial company to become unable or unwilling to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes and thereby pose a threat to U.S. financial stability. This analysis considers the extent to which other firms could provide similar financial services in a timely manner at a similar price and quantity if a nonbank financial company withdraws from a particular market, a factor commonly known as ''substitutability.'' Substitutability also captures situations in which a nonbank financial company is the primary or dominant provider of services in a market that the Council determines to be essential to U.S. financial stability. When evaluating this transmission channel, the Council may consider the nonbank financial company's activities and critical functions and the importance of those activities and functions to the U.S. financial system, including how those activities and functions would be performed by the company or other market participants in the event of the company's material financial distress; the competitive landscape for markets in which a nonbank financial company participates and for the services it provides; the company's market share in specific product lines; and the ability of substitutes to replace a service or function provided by the company, among other factors.

The Council received a number of comments regarding the transmission channels. One commenter stated that the transmission channels should refer to existing regulations or policies that relate to financial stability. The Council is statutorily required to take into account the degree to which the nonbank financial company is already regulated by one or more primary financial regulatory agencies, and this analysis will focus on the extent to which existing regulation of the company mitigates the potential risks to financial stability identified by the Council.

One commenter stated that in the asset liquidation transmission channel, the Council should establish a basis for concluding that a decline in asset prices, and resulting disruptions or losses, poses a threat to financial stability. The Final Guidance has been revised to clarify that, under the asset liquidation channel, the Council will consider whether a nonbank financial company holds assets that, if liquidated quickly, could pose a threat to U.S. financial stability by, for example, causing a fall in asset prices that significantly disrupts trading or funding in key markets or causes significant losses or funding problems for other firms with similar holdings. Commenters also stated that the Council should establish a basis for concluding that the risks identified under each transmission channel could pose a threat to financial stability, and should take into account mitigating factors. The Final Guidance has been revised to provide that the analysis under each transmission channel relates to the potential threat to U.S. financial stability, and that the Council will consider applicable factors that may mitigate potential threats under each transmission channel.

Several commenters provided industry-specific comments with respect to the transmission channels.

One commenter stated that the Council should include examples of risk-mitigating features of the insurance sector, such as recognizing insurance separate accounts, and mechanisms that mitigate potential fire sales of assets resulting from policyholder withdrawals or surrenders. The Final Guidance has been revised to make clear that the Council will consider applicable factors that may mitigate potential risks under the exposure transmission channel, such as the use of insurance funds to limit counterparty exposures or other transactions that reallocate risk to well-capitalized entities. Several commenters supported the statement in the Proposed Guidance that the Council will consider the extent to which assets are managed rather than owned by the company. Other comments highlighted factors that may limit potential risks to financial stability arising from asset managers. The Final Guidance has been revised to make clear that in its analyses under the transmission channels, the Council will consider applicable factors that may limit the transmission of risk, such as existing regulatory requirements, collateralization, bankruptcy-remote structures, or guarantee funds that reduce counterparties' exposures to the nonbank financial company or mitigate incentives for customers or counterparties to withdraw funding or assets. The Council's determination with respect to a nonbank financial company will be based on an evaluation of whether the nonbank financial company meets the statutory standards, taking into account the statutory considerations set forth in section 113 of the Dodd-Frank Act, and any other risk-related factors that the Council deems appropriate. While the Council does not intend to provide industry-based exemptions from potential determinations under section 113 of the Dodd-Frank Act, the Council intends to give these types of mitigating factors due consideration in its analysis of any nonbank financial company for a potential determination.

3. Complexity, Opacity, and Resolvability

In addition to the three transmission channels, the Final Guidance explains that the Council also intends to consider a nonbank financial company's complexity, opacity, and resolvability when evaluating whether the company poses a risk to U.S. financial stability. As part of this analysis, the Council may assess the complexity of the nonbank financial company's legal, funding, and operational structure, and any obstacles to the rapid and orderly resolution of the company. One commenter requested that the Final Guidance state that the Council expects to discuss these matters with the regulatory agency. The Final Guidance notes that the Council will consult with the relevant primary financial regulatory agency during both Stage 1 and Stage 2. When consulting with a company's primary financial regulatory agency (if any), the Council expects to discuss the company's complexity, opacity, and resolvability, as well as the likelihood of its material financial distress, taking into account a period of overall stress in the financial services industry and a weak macroeconomic environment (discussed in detail below).

4. Existing Regulatory Scrutiny

Consistent with section 113 of the Dodd-Frank Act, the Final Guidance explains that the Council will consider the degree to which a nonbank financial company is already regulated by one or more primary financial regulatory agencies. When considering existing regulatory scrutiny, the Council may weigh factors such as the comprehensiveness of the regulatory regime, the extent to which the company's primary financial regulatory agency has imposed risk-management standards as relevant to the type of company, regulators' processes for inter-regulator coordination, and the extent to which existing regulation of the company has mitigated the potential risks to financial stability identified by the Council.

5. Cost-Benefit Analysis and Likelihood of Material Financial Distress

a. Cost-Benefit Analysis

Under the Final Guidance, the Council will perform a cost-benefit analysis before making any determination under section 113. The Council proposes to make a determination under section 113 only if the expected benefits justify the expected costs that the determination would impose.[31] The key elements of regulatory analysis include (1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs of the proposed action and the main alternatives.[32] The Council will conduct this analysis only in cases where the Council is concluding that the company meets one of the standards for a determination by the Council under section 113 of the Dodd-Frank Act, because in other cases doing so would not affect the outcome of the Council's analysis.

The Council will consider the benefits of a determination to the U.S. financial system, long-term economic growth, and the nonbank financial company due to additional regulatory and supervisory requirements resulting from the determination, including the benefits of the prudential standards adopted by the Federal Reserve under section 165 of the Dodd-Frank Act. When evaluating potential benefits to the U.S. financial system and long-term economic growth arising from a determination, the Council may consider whether the determination enhances U.S. financial stability and mitigates the severity of economic downturns by reducing the likelihood or severity of a potential financial crisis, among other factors. With respect to company-specific benefits, a company subject to a determination may derive benefits from anticipated new or increased requirements, including, for example, a lower cost of capital or higher credit ratings upon meeting its post-designation regulatory and supervisory requirements.

When evaluating the costs of a determination, the Council will consider not only the cost to the nonbank financial company from anticipated new or increased regulatory and supervisory requirements in connection with a determination, but also costs to the U.S. economy. Relevant costs to the company will likely include costs related to risk-management requirements, supervision and examination, and liquidity requirements. When evaluating the costs of a determination to the U.S. economy, the Council will assess the impact of the determination on the availability and cost of credit or financial products in relevant U.S. markets, among other factors.

The majority of the commenters supported the proposal to perform a cost-benefit analysis before making any determination under section 113. Several commenters provided recommendations regarding the Council's analysis, including that the Council's analysis should be empirically based or use historical data (not assumptions), with estimates of indirect costs. The Final Guidance has been revised to add greater specificity regarding the Council's cost-benefit analysis. The Final Guidance makes clear that when possible, the Council will quantify reasonably estimable benefits and costs, using ranges, as appropriate, and based on empirical

[31] *See MetLife, Inc.* v. *Financial Stability Oversight Council,* 177 F. Supp.3d 219, 242 (D.D.C. 2016) (quoting 12 U.S.C. 5323(a)(2)(K) and *Michigan* v. *Environmental Protection Agency,* 135 S. Ct. 2699, 2707 (2015)).

[32] *See* Office of Management and Budget Circular A–4 (Sept. 17, 2003).

data when available. If such benefits or costs cannot be quantified in this manner, the Council will explain why such benefits or costs could not be quantified or estimated. The Council also expects to consider benefits and costs qualitatively. To the extent feasible, the Council will attempt to assess the relative importance of any such qualitative elements. At the same time, the Final Guidance recognizes that it may not be possible to assess with any degree of certainty certain potential benefits or costs, including indirect benefits or costs.

One commenter stated that the Council should not designate a nonbank financial company unless the Council can demonstrate that designation would effectively mitigate the risk posed by the firm. Another stated that the Council should make clear that the Council will not designate a nonbank financial company unless designation mitigates the risk to financial stability better than available alternatives. The Council believes these concerns are adequately addressed by the activities-based approach, as well as the Council's approach to making a determination under section 113 only if the expected benefits justify the expected costs that the determination would impose.

Several commenters stated that the Council should conduct its cost-benefit analysis based on the specific regulations that would apply to a nonbank financial company if it were designated. The Council declines to incorporate this requirement into its cost-benefit analysis, because it is not logistically practicable for the Federal Reserve, which must establish such prudential standards by rule or order, to provide this information to the Council before the relevant company has been designated. Another commenter stated that the Council should apply a cost-benefit analysis to any additional regulation the Council considers. However, the Council itself does not adopt regulations applicable to designated nonbank financial companies.

Several commenters opposed the proposal to perform a cost-benefit analysis before making determinations under section 113. Several commenters noted that the Dodd-Frank Act does not discuss a cost-benefit analysis in connection with section 113. Two commenters stated that the costs that will apply to a particular firm will depend on the supervisory and regulatory regime the Federal Reserve establishes after the designation. One commenter stated that cost-benefit analysis is a burdensome, time-consuming, and imprecise methodology. One commenter stated that the costs and benefits of designation are difficult to predict in advance, in part because it is impossible to estimate the likelihood, magnitude, or timing of a future financial crisis. The Council believes that rigorous cost-benefit analysis is consistent with thoughtful decision-making, and that it is an important step to ensure that the Council makes a determination under section 113 only if the expected benefits justify the expected costs of the determination. Finally, two commenters stated that requiring cost-benefit analysis will make it easier for a designated company to litigate its designation. The Council will strive to perform analytically robust cost-benefit analysis in a timely manner.

b. Likelihood of Material Financial Distress

Consistent with sound risk regulation, the Council will consider not only the impact of an identifiable risk, but also the likelihood that the risk will be realized. The Council will therefore assess the likelihood of a company's material financial distress, based on its vulnerability to a range of factors, when evaluating the overall impact of a Council determination for any company under review under the First Determination Standard. The description of the Council's analytical process for assessing the likelihood of a company's material financial distress has been revised based on public comments. The Final Guidance provides that factors the Council may consider include leverage (both on and off balance sheet), potential risks associated with asset reevaluations (whether such reevaluations arise from market disruptions or severe macroeconomic conditions), reliance on short-term funding or other fragile funding markets, maturity transformation, and risks from exposures to counterparties or other market participants. The Council's assessment may rely upon historical examples regarding the characteristics of financial companies that have experienced financial distress, but may also consider other risks that do not have historical precedent. The Council's analysis of the vulnerability of a nonbank financial company to material financial distress will be conducted taking into account a period of overall stress in the financial services industry and a weak macroeconomic environment.

Several commenters supported the proposal that the Council will assess the likelihood of a company's material financial distress. One commenter stated that for any determination, the Council should be required to determine that distress is reasonably likely to occur and that the distress is reasonably likely to inflict severe damage on the economy as a whole, using empirical and historical data. The criterion is not included in the Final Guidance, because it would impose an unduly high burden on the Council's ability to designate a nonbank financial company.

Several other commenters opposed the proposal that the Council will assess the likelihood of a company's material financial distress. Three commenters stated that the Dodd-Frank Act does not require that the Council assess the likelihood of a company's material financial distress. However, the Council believes that performing such a likelihood assessment is an important part of the Council's assessment of the extent to which a determination may promote U.S. financial stability. Several commenters stated that the Dodd-Frank Act requires the Council to assume the material financial distress of a nonbank financial company. One commenter stated that the Council has a duty to designate a nonbank financial company when the Council determines that the company could pose a risk to financial stability if it fails, and that the Council does not need to predict the probability of failure or the mechanism for that failure. The Council has authority under section 113 of the Dodd-Frank Act, including under section 113(a)(2)(K), which authorizes the Council to consider ''any other risk-related factors that the Council deems appropriate,'' to consider the vulnerability of a nonbank financial company to material financial distress as part of the Council's analysis.

Commenters opposed to the Council's assessment of the likelihood of material financial distress raised a number of other objections, including that this assessment will be a significant barrier to designation; no accurate metrics exist that would enable the Council to measure the likelihood of a company's material financial distress; and it is difficult to anticipate the catalyst, dynamics, or timing of a financial crisis. The Council believes that its analysis, including its consultations with a company's primary financial regulatory agency and its assessment of the statutory considerations, will enable the Council to evaluate the likelihood of the company's material financial distress. Several commenters also stated that the Council's determination regarding the likelihood of a company's material financial distress could publicly signal concern regarding a firm's health, which could harm the company. The Council believes that the marketplace will, in most cases, consider the same fundamental factors that the Council

evaluates for purposes of independently assessing the likelihood of material financial distress at a company that is being evaluated for a potential determination. Finally, several commenters argued that the Council should interpret section 113 of the Dodd-Frank Act in a manner that is consistent with *MetLife* v. *FSOC,*[33] while several others argued it should not. Where appropriate, the Final Guidance reflects the Council's view regarding the extent to which it should adopt the analysis from that judicial decision.[34]

D. Determination and Annual Reevaluation Process

As noted above, the Council will prioritize an activities-based approach for identifying, assessing, and addressing potential risks to financial stability. The Council may, however, subject a nonbank financial company to review for an entity-specific determination under section 113 of the Dodd-Frank Act if the activities-based approach would not adequately address potential risks to U.S. financial stability.[35] As noted above, the Final Guidance provides that the Council will vote to commence review of a nonbank financial company in Stage 1.

As proposed, the Final Guidance condenses the prior three-stage determination process into two stages by eliminating prior stage 1, makes other procedural improvements, and incorporates certain provisions of the 2015 Supplemental Procedures.[36] Following is a description of the processes set forth in the Final Guidance for the Council's evaluation of a nonbank financial company for a potential determination under section 113 and the Council's annual reevaluations of any such determinations.

1. Stage 1: Preliminary Evaluation of Nonbank Financial Companies

In the first stage of the determination process, the Council will notify nonbank financial companies identified as potentially posing risks to U.S. financial stability. Under the Final Guidance, the Council will engage extensively with the relevant company and its financial regulators during Stage 1. The Council's preliminary analysis will be based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. In addition, a company under review in Stage 1 may voluntarily submit to the Council any information it deems relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis. In order to reduce the burdens of review on the company, the Council will not require the company to submit information during Stage 1.

In consideration of the benefits that the Council will derive from extensive engagement with a company's primary financial regulatory agency, the Council will actively solicit the regulator's views regarding risks at the company and potential means to mitigate those risks, and will share its preliminary views regarding potential risks at the company with the regulator. The Final Guidance notes that the Council will consult with the primary financial regulatory agency during both Stage 1 and Stage 2. Several commenters expressed support for this approach, and stated that engagement with primary regulators should be a key component of the determination process.

Enhanced engagement in Stage 1 is intended to allow a company under review to provide the Council with relevant information, which will help to ensure that the Council is making decisions based on a diverse array of data and rigorous analysis, and to provide the company with greater visibility into the aspects of its business that may pose risks to U.S. financial stability. Another goal of the enhanced engagement in Stage 1 is to enable the company to take actions in response to the Council's concerns, thereby providing a pre-designation ''off-ramp,'' while not burdening a company with the relatively higher costs that may be incurred during a Stage 2 evaluation. By making a company aware of the potential risks the Council has identified during its preliminary review, the Council seeks to give the company more information and tools to mitigate those risks prior to any Council determination. One commenter recommended that the Final Guidance provide greater detail regarding the pre-designation ''off-ramp.'' The Final Guidance has been revised to clarify that the Council will seek to enable a company under review to understand the focus of the Council's analysis, which may enable the company to act to mitigate any threats to U.S. financial stability and thereby potentially avoid becoming subject to a Council determination. One commenter stated that the Council should undertake early engagement with firms during the designation process. The Council believes that its approach in Stage 1, as described above, addresses this comment.

Following the preliminary evaluation in Stage 1, the Council may decide not to evaluate the company further, or it may vote to commence a more detailed analysis of the company by advancing it to Stage 2. One commenter recommended that if a Stage 1 review is terminated, there should be a waiting period before Stage 1 can be restarted. Because such a waiting period could prevent the Council from acting to address a potential threat to financial stability even if new developments or new information arose, this requested change has not been made.

As noted above, the Final Guidance condenses the prior three-stage process for a determination under section 113 into two stages, by eliminating prior stage 1, which had been established by the 2012 Interpretive Guidance. Under prior stage 1, a set of uniform quantitative metrics was applied to a broad group of nonbank financial companies in order to identify nonbank financial companies for further evaluation and to provide clarity for other nonbank financial companies that likely would not be subject to evaluation for a potential determination. Several commenters expressed views on the elimination of the stage 1 thresholds. Prior stage 1 had generated confusion among firms and members of the public and was not compatible with the prioritization of an activities-based approach, so it has been eliminated.

2. Transition From Stage 1 to Stage 2

The Proposed Guidance did not specify whether a Council vote would be required to advance a nonbank financial company from Stage 1 to Stage 2. Based on public comments, the Final Guidance has been revised to specify that a Council vote is required to

[33] 177 F. Supp.3d 219 (D.D.C. 2016).

[34] The U.S. District Court for the District of Columbia in *MetLife* v. *FSOC* held that the Council had acted in an arbitrary and capricious manner. Specifically, the court stated that ''FSOC purposefully omitted any consideration of the cost of designation to MetLife. Thus, FSOC assumed the upside benefits of designation (even without specific standards from the Federal Reserve) but not the downside costs of its decision.'' 177 F.Supp.3d 219, 230. The Final Guidance seeks to ensure that future Council determinations comport with the court's decision and consider costs.

[35] As noted above, the Council anticipates it would consider a determination under section 113 only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies.

[36] As discussed in section II(A)(1) above, the Proposed Guidance eliminates the six-category framework described in the 2012 Interpretive Guidance.

advance a company to Stage 2.[37] For any company under review in Stage 1 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will consult with the regulator, as appropriate, before the Council votes on whether to advance the company to Stage 2. One commenter stated that the primary regulator should have the primary role in advancing a firm from Stage 1 to Stage 2. As described above, the Final Guidance provides for extensive engagement between the Council and the primary financial regulatory agency during the determination process. The Council does not, however, believe it is appropriate to give the primary financial regulatory agency a specific additional role in advancing a firm from Stage 1 to Stage 2.

One commenter requested that the Council clarify that there is no obligation to advance a nonbank financial company from Stage 1 to Stage 2. The Council confirms that it will advance a nonbank financial company to Stage 2 only if the Council determines that the company merits further review after the analysis in Stage 1.[38]

3. Stage 2: In-Depth Evaluation

In Stage 2, the Council will conduct an in-depth evaluation of any company that the Council has determined in Stage 1 merits additional review. Under the Final Guidance, the Council would continue in Stage 2 to engage extensively with the relevant company and its existing regulators.

In Stage 2, the Council will request that the company provide information that the Council deems relevant to its evaluation, which will involve both qualitative and quantitative data. The Council will take certain preliminary steps before requiring the submission of reports from any nonbank financial company that is regulated by a Council member agency or any primary financial regulatory agency; acting through the OFR, the Council will coordinate with these agencies and, whenever possible, rely on information available from the OFR or these agencies.

The Council will take steps to facilitate a transparent review process with the company during Stage 2. During Stage 2, the company may submit any other information that it deems relevant to the Council's evaluation, and the Council will make staff representing Council members available to meet with the representatives of the company, to explain the evaluation process and the framework for the Council's analysis. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues. Several commenters stated that the Final Guidance should provide that Council members and their deputies are available to meet with nonbank financial companies in Stage 1 and Stage 2. The Final Guidance provides for the Council's Deputies Committee to meet with a company in Stage 2, to allow the company to present any information or arguments it deems relevant to the Council's evaluation. In addition, individual Council members may determine that it is appropriate to meet with a nonbank financial company under review, subject to the need to maintain a single administrative record and consistency in the information available to each of the Council members. In addition, the Council will seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes any proposed or final determination, encouraging the relevant financial regulator to address relevant risks using the regulator's existing authorities. The Council will notify the company when the Council believes that the evidentiary record regarding the company is complete, before the Council either makes any proposed determination regarding the company, or alternatively, notifies the company that it is no longer being considered for a determination at that time.

Several commenters provided recommendations regarding the transparency of the determination process and the Council's procedures for providing information to nonbank financial companies under review. Two commenters stated that the Council should not consider information from primary regulators that cannot, due to confidentiality requirements, also be provided to the nonbank financial company under review. The Council expects to rely on data, research, and analysis from Council member agencies and the OFR, among other sources, in the determination process. Certain of these materials may include internal work product and analysis that are not intended for external distribution. However, the Council expects that any information that the Council relies on to support a determination regarding a nonbank financial company under section 113 of the Dodd-Frank Act will be included in the Council's written explanation of the final determination, which will be provided to the company. Several other commenters stated that the Council should provide a nonbank financial company under evaluation with a written description of its potential threat to financial stability in Stage 1, or an explanation why an activities-based approach would not mitigate the potential threat. The Final Guidance provides that during Stage 1, the Council intends for staff of Council members and member agencies to explain to the company the key risks that have been identified in the analysis. However, because the review of the company is preliminary and continues to change until the Council makes a final determination, these identified risks may shift over time, so it is not practicable to provide a company with a written explanation of the potential threat to financial stability during Stage 1.

Several commenters stated that the Council should share all Council information with a nonbank financial company under review during Stages 1 and 2, including any cost-benefit analysis, expert, or regulatory analysis. Due to the preliminary nature of the Council's internal work product during Stages 1 and 2, sharing all of this information with the company under review would impose considerable burdens on the Council, while not necessarily providing the company with a clear understanding of the issues the Council is focusing on. Instead, the Final Guidance reflects numerous procedural improvements to the determination process compared to the 2012 Interpretive Guidance, which are intended to facilitate the Council's engagement and transparency. The Final Guidance increases the Council's engagement with nonbank financial companies and their regulators during the determination process, balanced with the Council's resources and need to perform the analysis in a timely manner.

Several commenters stated that the Council should provide a nonbank financial company with a written explanation of the reasons for advancing it from Stage 1 to Stage 2, and an opportunity to respond, before advancing it to Stage 2. The process under the Final Guidance for Stage 1 and Stage 2 provides extensive opportunities for a company to submit information to the Council and to

[37] Under the Dodd-Frank Act, unless otherwise specified in the statute, the Council must make all decisions that it is authorized or required to make by a majority vote of the voting members then serving. Dodd-Frank Act section 111(f), 12 U.S.C. 5321(f).

[38] See also the chart of Council votes that would occur at significant transition points in the Council's analysis, in section II(A)(2) above.

discuss that information with staff of Council members and member agencies. In particular, the Final Guidance provides that if the Council's analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. Further, during Stage 2, a company may submit any information that it deems relevant to the Council's evaluation, and the Council will make staff representing Council members available to meet with the representatives of the company, to explain the evaluation process and the framework for the Council's analysis. The Final Guidance also provides for the Council's Deputies Committee to meet with a company in Stage 2, to allow the company to present any information or arguments it deems relevant to the Council's evaluation.

4. Proposed Determination; Hearing

The procedural steps related to the Council's proposed determinations, hearings, and final determinations are largely specified in section 113 of the Dodd-Frank Act.

A nonbank financial company may be considered for a proposed determination based on the analysis performed in Stage 2. In the event the Council votes to make a proposed determination, the Council will issue a written notice and explanation of the proposed determination to the company, and will also provide the company's primary financial regulatory agency or home country supervisor (subject to appropriate protections for confidential information) with the nonpublic written explanation of the basis for the proposed determination. In accordance with section 113(e) of the Dodd-Frank Act, a nonbank financial company that is subject to a proposed determination may request a nonpublic hearing before the Council to contest the proposed determination.

Several commenters stated that the Council should provide the full evidentiary record to a nonbank financial company in Stage 2 at least 30 days before a proposed determination, and give the company the opportunity to review and comment on the materials. The procedures under the Final Guidance provide extensive opportunities for engagement with companies under review, including during Stages 1 and 2 and after a proposed determination, so the Council is not adopting these recommended changes.

Several commenters requested additional changes to the procedures for the Council's hearings for nonbank financial companies subject to proposed determinations. The Council's Hearing Procedures, which are not being amended at this time, provide for transparent engagement between the Council and nonbank financial companies. Further, under the Final Guidance, a company has extensive opportunities to submit information to the Council and meet with representatives of Council members and member agencies during the Council's review in Stage 2, which will precede any proposed determination or hearing. The Council is therefore not adopting further changes related to its hearings.

5. Final Determination

After making a proposed determination and holding any requested written or oral hearing, the Council may make a final determination in accordance with the Dodd-Frank Act that the company will be subject to supervision by the Federal Reserve and prudential standards. If the Council makes a final determination regarding the company, the Council will provide the company with a written notice of the Council's final determination, including an explanation of the basis for the Council's decision, and will also provide the company's primary financial regulatory agency or home country supervisor with the nonpublic written explanation of the basis of the Council's final determination, subject to appropriate protections for confidential information. Under the Final Guidance, the Council expects that its explanation of the final basis for any determination will highlight the key risks that led to the determination and include clear guidance regarding the factors that were most important in the Council's determination.

One commenter recommended that the Final Guidance state that the Council will assess all available alternatives before considering any nonbank financial company for potential determination. Two commenters stated that the Council should only designate a nonbank financial company with the consent of its primary regulator. Under the Final Guidance, Stage 2 will include numerous procedures to facilitate a robust and transparent review process with the company and its primary financial regulatory agency. For example, during Stage 2, the company may submit any information that it deems relevant to the Council's evaluation, and the Council will make staff representing Council members available to meet with the representatives of the company. In addition, the Council will seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes any proposed or final determination, encouraging the relevant financial regulator to address relevant risks using the regulator's existing authorities. These procedures should ensure adequate engagement between the Council, the company under review, and its primary financial regulatory agency.

Unchanged from the 2012 Interpretive Guidance, when practicable and consistent with the purposes of the determination process, the Council will provide a nonbank financial company with a notice of a final determination at least one business day before publicly announcing the determination. As a result, the Council generally will not issue any public notice regarding its determination vote on the day of the vote; instead, to enable the company adequately to prepare its public disclosures regarding the Council's determination, the first public announcement by the Council will generally be the day after the Council's vote. Although this approach will result in a short delay in the public announcement of a Council vote on a final determination, the benefit of enabling the company to prepare for the public announcement, and to review the Council's materials for confidential, sensitive business information before their public release, warrants the delay.

Other commenters provided recommendations related to the procedural steps for a final determination. Several commenters stated that the Council should separate Council staff responsible for reviewing a nonbank financial company from those responsible for determining whether designation is warranted, and one commenter stated that the Council should allow companies to examine the Council staff who conducted the analysis. While staff of the Council members and member agencies analyze nonbank financial companies, the decision makers are the voting members of the Council, and the Council is not adopting these recommendations regarding its staffing structure. One commenter stated that the Council should allow firms to appeal their designation to an ''independent authority.'' The Dodd-Frank Act provides that any nonbank financial company subject to a final determination may challenge the Council's action in court, which

provides ample opportunity for an independent authority to review the determination.[39] Two commenters stated that before making a final determination regarding a nonbank financial company, the Council should receive from the Federal Reserve a detailed, company-specific supervisory plan. One of these commenters stated that the Council should share the plan with the relevant nonbank financial company. This recommendation has not been incorporated into the Final Guidance because it is not logistically practicable for the Federal Reserve, which must establish such prudential standards by rule or order, to provide this information to the Council before the relevant company has been designated.

Several commenters expressed support for the greater analytical rigor and process improvements reflected in the Proposed Guidance. For example, the Council will provide each designated nonbank financial company with an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

6. Annual Reevaluations of Nonbank Financial Company Determinations

For any nonbank financial company that is subject to a final determination, the Council is required by statute to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination. The Final Guidance incorporates a number of additional procedural steps, not mandated by the Dodd-Frank Act, for annual reevaluations, in order to enhance engagement with companies and their regulators, and to increase transparency. One of the goals of these changes is to clarify the post-designation ''off-ramp'' process for a company, which would enable the company to identify changes it could consider making to address the potential threat to financial stability identified by the Council, and receive feedback regarding whether those changes may address the Council's concerns. One commenter opposed to the off-ramp procedures stated that they would involve the Council in firms' business decisions, thereby increasing litigation risk. The Council intends that this process should be flexible and tailored to the risks posed by designated companies, rather than hard-wired or overly prescriptive. The process is intended to incentivize designated companies to address the key factors that led to designation, which would promote the Council's goal of reducing risks to U.S. financial stability. The Council believes that this flexible approach will limit its involvement in a designated company's business decisions and allow the company, rather than the Council, to identify the most appropriate means to mitigate risks.

The Final Guidance provides that in the event the Council makes a final determination regarding a company, the Council intends to encourage the company and, if appropriate, its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its final determination. Except in cases where new material risks arise over time, if a company adequately addresses the potential risks identified in writing by the Council at the time of the final determination and in subsequent reevaluations, the Council should generally be expected to rescind its determination regarding the company. To facilitate this process, companies are encouraged during annual reevaluations to submit information regarding any changes related to the company's risk profile that mitigate the potential risks identified in the Council's final determination of the company and in reevaluations of the determination. If the company explains in detail potential changes it could make to its business to address the potential risks previously identified by the Council, staff of Council members and Council member agencies will endeavor to provide their feedback on the extent to which those changes may address the potential risks. Consistent with public comments, the Final Guidance provides that if a company contests the Council's determination during the Council's annual reevaluation, the Council will provide the company, its primary financial regulatory agency, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. The notice will address each of the material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation.

Several commenters expressed support for both the pre-designation and post-designation ''off-ramps''. One commenter also stated that the Council should de-designate firms if the benefits of designation are not outweighing costs, and another stated that the Council should have a streamlined process for doing so. The Council believes that the post-designation off-ramp described above provides for a robust and streamlined review process. As part of its review of a designated company, the Council does not believe it is appropriate to perform another cost-benefit analysis, in addition to the cost-benefit analysis performed prior to the designation, in light of timing and resource constraints in the context of annual reevaluations of previous determinations.

The Final Guidance also underscores that the Council applies the same standards of review in its annual reevaluations as the standard for an initial determination regarding a nonbank financial company: Either the company's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company no longer meets those standards, the Council will rescind its determination. The Final Guidance also stresses that, while the Council's annual reevaluation of a company subject to a final determination will generally focus on changes since the Council's previous review, the ultimate question the Council will seek to assess is whether changes in the aggregate since the company's designation have caused the company to cease meeting the Determination Standards.[40]

Several commenters stated that the Council should adopt a framework for evaluating the impact of its designations, and assess the effectiveness of designation regularly. For any nonbank financial company that is subject to a final determination, the Council is required by statute to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a designation. The Final Guidance incorporates a number of additional procedural steps for annual reevaluations to enhance engagement with companies and their regulators, and to increase transparency. The measures should ensure that a nonbank financial company is designated, or remains designated, only if it meets the statutory standard for designation.

[39] Dodd-Frank Act section 113(h), 12 U.S.C. 5323(h).

[40] In a reevaluation of a determination, the Council may choose to consider only one Determination Standard, for example because changes that address the potential threats previously identified by the Council under one Determination Standard may also address potential threats relevant to the other Determination Standard.

E. Other Comments Received

Several commenters provided recommendations about international issues regarding the Proposed Guidance, including international regulatory coordination and the relationship between Council designations and the Financial Stability Board's (FSB's) identification of U.S. nonbank financial companies as global systemically important institutions. The Council supports the promotion of regulatory coordination at the international level, but is not expressing a view on its member agencies' roles in international discussions.

Several commenters stated that the Council should commit in the Final Guidance to ensuring the confidentiality of all collected information. The Final Guidance notes that the Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.[41] Under applicable law and the Council's rules, the Freedom of Information Act (FOIA) and the applicable exemptions thereunder apply to any data or information submitted under the rule. In addition, the Council's FOIA rule applies to data and information received by the Council.[42] The Council expects that nonbank financial companies' submissions will likely contain or consist of ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' and information that is ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' These types of information are subject to withholding under exemptions 4 and 8 of the FOIA (5 U.S.C. 552(b)(4) and (8)). To the extent that nonbank financial companies' submissions contain or consist of data or information not subject to an applicable FOIA exemption, that data or information would be releasable under the FOIA.

In addition, it should be noted that all members of the Council, including both its voting and non-voting members, will treat records of the Council in accordance with the Council's FOIA rule. When the Council and its members provide non-public information to each other in connection with Council functions and activities, the recipients generally intend to treat such information as confidential and not publicly disclose such information without the consent of the providing party. However, such information may be used by the recipients for enforcement, examination, resolution planning, or other purposes, subject to any appropriate limitations on the disclosure of such information to third parties, taking into account factors including the need to preserve the integrity of the supervision and examination process. The Council believes that the additional confidentiality restrictions suggested by commenters generally would not materially increase the confidentiality of information collected by the Council, due to requirements under the FOIA, or would harmfully constrain the Council's ability to perform its evaluations of nonbank financial companies.

Finally, other commenters raised various comments related to the operations of the Council. One commenter recommended that the Final Guidance should state that any departure from the Final Guidance should be treated as a modification that requires public comment (other than in emergency situations affecting a single company that require immediate action). The Council previously adopted a rule stating that it will not amend or rescind its interpretive guidance on nonbank financial company determinations without soliciting public notice and comment,[43] which the Council believes addresses this concern.

III. Legal Authority of Council and Status of the Final Guidance

The Council has numerous authorities and tools under the Dodd-Frank Act to carry out its statutory purposes.[44] The Council expects that its response to any potential risk or threat to U.S. financial stability will be based on an assessment of the circumstances. As the agency charged by Congress with broad-ranging responsibilities under sections 112 and 113 of the Dodd-Frank Act, the Council has the inherent authority to promulgate interpretive guidance under those provisions that explains and interprets the statutory factors that the Council will consider when employing the activities-based approach and undertaking the determination process.[45] The Council also has authority to issue procedural rules[46] and policy statements.[47] The Final Guidance describes the Council's interpretation of the statutory factors and provides transparency to the public as to how the Council intends to exercise its statutory grant of discretionary authority. Except to the extent that the Final Guidance sets forth rules of agency organization, procedure, or practice, the Council has concluded that the Final Guidance does not have binding effect; does not impose duties on, or alter the rights or interests of, any person; does not change the statutory standards for the Council's decision making; and does not relieve the Council of the need to make entity-specific determinations in accordance with section 113 of the Dodd-Frank Act.

IV. Paperwork Reduction Act

The collection of information contained in the Final Guidance has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control 1505–0244. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information under the Final Guidance is found in 12 CFR 1310.20–1310.23, which were added pursuant to the 2012 Final Rule and Interpretive Guidance.[48]

The hours and costs associated with preparing data, information, and reports for submission to the Council constitute reporting and cost burdens imposed by the collection of information. The estimated total annual reporting burden associated with the collection of information in the Final Guidance is 20 hours, based on an estimate of one respondent. We estimate the cost associated with this information collection to be $9,000. These estimates are significantly lower than those in the Paperwork Reduction Act discussion in the 2012 Final Rule and Interpretive Guidance, because the Council expects

[41] *See* Dodd-Frank Act section 112(d)(5), 12 U.S.C. 5322(d)(5); *see also* 2012 Final Rule and Interpretive Guidance at 21648–21649 and 12 CFR 1310.20(e).

[42] *See* 12 CFR 1310.20(e)(3).

[43] 84 FR 8958 (March 13, 2019).

[44] *See,* for example, Dodd-Frank Act sections 112(a)(2), 113, 115, 120, 804, 12 U.S.C. 5322(a)(2), 5323, 5325, 5330, 5463.

[45] Courts have recognized that ''an agency charged with a duty to enforce or administer a statute has inherent authority to issue interpretive rules informing the public of the procedures and standards it intends to apply in exercising its discretion.'' *See,* for example, *Production Tool* v. *Employment & Training Administration,* 688 F.2d 1161, 1166 (7th Cir. 1982). The Supreme Court has acknowledged that ''whether or not they enjoy any express delegation of authority on a particular question, agencies charged with applying a statute necessarily make all sorts of interpretive choices.'' *See U.S.* v. *Mead,* 533 U.S. 218, 227 (2001).

[46] *See* Dodd-Frank Act section 111(e)(2), 12 U.S.C. 5321(e)(2).

[47] *See Association of Flight Attendants-CWA, AFL–CIO* v. *Huerta,* 785 F.3d 710 (D.C. Cir. 2015).

[48] *See* note 3 above.

that, notwithstanding any additional reporting burden that financial companies participating in the activities-based approach may incur, the aggregate reporting burden on companies will be significantly reduced as a result of the Council's proposal to pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk or threat cannot be adequately addressed through an activities-based approach.

In making this estimate, the Council estimates that due to the nature of the information likely to be requested, approximately 75 percent of the burden in hours will be carried by financial companies internally at an average cost of $400 per hour, and the remainder will be carried by outside professionals retained by financial companies at an average cost of $600 per hour. In addition, in determining these estimates, the Council considered its obligation under 12 CFR 1310.20(b) to, whenever possible, rely on information available from the OFR or any Council member agency or primary financial regulatory agency that regulates a nonbank financial company before requiring the submission of reports from such nonbank financial company. The Council expects that its collection of information under the Final Guidance will be performed in a manner that attempts to minimize burdens for affected financial companies. The aggregate burden will be subject to the number of financial companies that participate in the activities-based approach or are evaluated in the determination process, the extent of information regarding such companies that is available to the Council through existing public and regulatory sources, and the amount and types of information that financial companies provide to the Council. The Proposed Guidance requested comment on the estimates and other assumptions in the proposed collection of information, but no comments were received in response to the questions presented.

V. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct certain agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs within the Office of Management and Budget has designated this interpretive guidance as a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

List of Subjects in 12 CFR Part 1310

Brokers, Investments, Securities.

The Financial Stability Oversight Council is amending 12 CFR part 1310 as follows:

PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

■ 2. Appendix A is revised to read as follows:

Appendix A to Part 1310—Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations

I. Introduction

Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') [1] authorizes the Financial Stability Oversight Council (the ''Council'') to determine that a nonbank financial company will be supervised by the Board of Governors of the Federal Reserve System (the ''Federal Reserve'') and be subject to prudential standards in accordance with Title I of the Dodd-Frank Act if either of two standards is met. Under the first standard, the Council may subject a nonbank financial company to supervision by the Federal Reserve and prudential standards if the Council determines that material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States. Under the second standard, the Council may determine that a nonbank financial company will be supervised by the Federal Reserve and subject to prudential standards if the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to U.S. financial stability. Section 113 of the Dodd-Frank Act also lists considerations that the Council must take into account in making a determination.

Section II of this document describes the approach the Council intends to take in prioritizing its work to identify and address potential risks to U.S. financial stability using an activities-based approach. This approach reflects the Council's priorities of identifying potential risks on a system-wide basis, reducing the potential for competitive distortions that could arise from entity-specific determinations, and allowing relevant financial regulatory agencies [2] to address identified potential risks. First, the Council will monitor markets to identify potential risks to U.S. financial stability and to assess those risks on a system-wide basis. Second, the Council will then work with relevant financial regulatory agencies to seek the implementation of actions intended to address identified potential risks to financial stability.

Section III of this appendix describes the manner in which the Council intends to apply the statutory standards and considerations in making determinations under section 113 of the Dodd-Frank Act, if the Council determines that potential risks to U.S. financial stability are not adequately addressed through the activities-based approach. Section III defines key terms used in the statute, including ''threat to the financial stability of the United States.'' Section III also includes a detailed description of the analysis that the Council intends to conduct during its reviews, including a discussion of channels through which risks from a company may be transmitted to other companies or markets, and the Council's assessment of the likelihood of the company's material financial distress and the benefits and costs of a determination.

Section IV of this appendix outlines a two-stage process that the Council will follow in non-emergency situations when determining whether to subject a nonbank financial company to Federal Reserve supervision and prudential standards. In the first stage of the process, the Council will notify the company and its primary financial regulatory agency and conduct a preliminary analysis to determine whether the company should be subject to further evaluation by the Council. During the second stage of the evaluation process, the Council will conduct an in-depth evaluation if it determines in the first stage that the nonbank financial company merits additional review.

The Council's practices set forth in this guidance to address potential risks to U.S. financial stability are intended to comply with its statutory purposes: (1) To identify risks to U.S. financial stability that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (2) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the government will shield them from losses in the event of failure; and (3) to respond to emerging threats to the stability of the U.S. financial system.[3] Council actions seek to foster transparency and to avoid competitive distortions in markets for financial services and products. Further, nonbank financial

[1] *See* Dodd-Frank Act section 113, 12 U.S.C. 5323.

[2] References in this appendix to ''relevant financial regulatory agencies'' may encompass a broader range of regulators than those included in the statutory definition of ''primary financial regulatory agency,'' which is defined in Dodd-Frank Act section 2(12), 12 U.S.C. 5301(12).

[3] Dodd-Frank Act section 112(a)(1), 12 U.S.C. 5322(a)(1).

companies should not benefit from an implicit federal financial safety net. Therefore, the Council emphasizes the importance of market discipline as a mechanism for addressing potential risks to U.S. financial stability posed by financial companies.

This interpretive guidance is not a binding rule, except to the extent that it sets forth rules of agency organization, procedure, or practice. This guidance is intended to assist financial companies and other market participants in understanding how the Council expects to exercise certain of its authorities under Title I of the Dodd-Frank Act. The Council retains discretion, subject to applicable statutory requirements, to consider factors relevant to the assessment of a potential risk or threat to U.S. financial stability on a case-by-case basis. If the Council were to depart from the interpretative guidance, it would need to provide a reasoned explanation for its action, which would ordinarily require acknowledging the change in position.[4]

II. Activities-Based Approach

The Dodd-Frank Act gives the Council broad discretion in determining how to respond to potential threats to U.S. financial stability. A determination to subject a nonbank financial company to Federal Reserve supervision and prudential standards under section 113 of the Dodd-Frank Act is only one of several Council authorities for responding to potential risks to U.S. financial stability.[5] The Council will prioritize its efforts to identify, assess, and address potential risks and threats to U.S. financial stability through a process that begins with an activities-based approach, and will pursue entity-specific determinations under section 113 of the Dodd-Frank Act only if a potential risk or threat cannot be adequately addressed through an activities-based approach. The Council anticipates it would consider a nonbank financial company for a potential determination under section 113 only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies. This approach reflects two priorities: (1) Identifying and addressing, in consultation with relevant financial regulatory agencies, potential risks and emerging threats on a system-wide basis and to reduce the potential for competitive distortions among financial companies and in markets that could arise from entity-specific determinations, and (2) allowing relevant financial regulatory agencies, which generally possess greater information and expertise with respect to company, product, and market risks, to address potential risks, rather than subjecting the companies to new regulatory authorities.

As part of its activities-based approach, the Council will examine a range of financial products, activities, or practices that could pose risks to U.S. financial stability. These types of activities are often identified in the Council's annual reports, such as activities related to (1) the extension of credit, (2) the use of leverage or short-term funding, (3) the provision of guarantees of financial performance, and (4) other key functions critical to support the functioning of financial markets. The Council considers a risk to financial stability to mean a risk of an event or development that could impair financial intermediation or financial market functioning to a degree that would be sufficient to inflict significant damage on the broader economy. The Council's activities-based approach is intended to identify and address risks to financial stability using a two-step approach, described below.

a. Step One of Activities-Based Approach: Identifying Potential Risks From Products, Activities, or Practices

Monitoring Markets

The Council has a statutory duty to monitor the financial services marketplace in order to identify potential threats to U.S. financial stability.[6] In the first step of the activities-based approach, to enable the Council to identify potential risks to U.S. financial stability, the Council, in consultation with relevant financial regulatory agencies, intends to monitor diverse financial markets and market developments to identify products, activities, or practices that could pose risks to U.S. financial stability. When monitoring potential risks to financial stability, the Council intends to consider the linkages across products, activities, and practices, and their interconnectedness across firms and markets.

For example, the Council's monitoring may include:

- Corporate and sovereign debt and loan markets;
- equity markets;
- markets for other financial products, including structured products and derivatives;
- short-term funding markets;
- payment, clearing, and settlement functions;
- new or evolving financial products, activities, and practices; and
- developments affecting the resiliency of financial market participants.

To monitor markets and market developments, the Council will review information such as historical data, research regarding the behavior of financial market participants, and new developments that arise in evolving marketplaces. The Council will regularly rely on data, research, and analysis from Council member agencies, the Office of Financial Research, industry participants, and other public sources. Consistent with its statutory obligations, the Council will, whenever possible, rely on information available from primary financial regulatory agencies.[7]

Evaluating Potential Risks

If the Council's monitoring of markets and market developments identifies a product, activity, or practice that could pose a potential risk to U.S. financial stability, the Council, in consultation with relevant financial regulatory agencies, will evaluate the potential risk to determine whether it merits further review or action. The Council's work in this step may include efforts such as sharing data, research, and analysis among Council members and member agencies and their staffs; consultations with regulators and other experts regarding the scope of potential risks and factors that may mitigate those risks; and the collaborative development of analyses for consideration by the Council. As part of this work, the Council may also engage with industry participants and other members of the public as it assesses potential risks.

The Council will assess the extent to which characteristics such as the following could amplify potential risks to U.S. financial stability arising from products, activities, or practices:

- Asset valuation risk or credit risk;
- leverage, including leverage arising from debt, derivatives, off-balance sheet obligations, and other arrangements;
- liquidity risk or maturity mismatch, such as reliance on funding sources that could be susceptible to dislocations;
- counterparty risk and interconnectedness among financial market participants;
- the transparency of financial markets, such as growth in financial transactions occurring outside of regulated sectors;
- operational risks, such as cybersecurity and operational resilience; or
- the risk of destabilizing markets for particular types of financial instruments, such as trading practices that substantially increase volatility in key markets.

Various factors may exacerbate or mitigate each of these types of risks. For example, activities may pose greater risks if they are complex or opaque, are conducted without effective risk-management practices, are significantly correlated with other financial products, and are either highly concentrated or significant and widespread. In contrast, regulatory requirements or market practices may mitigate risks by, for example, limiting exposures or leverage, enhancing risk-management practices, or restricting excessive risk-taking.

While the contours of the Council's initial evaluation of any potential risk will depend on the type and scope of analysis relevant to the particular risk, the Council's analyses will generally focus on four framing questions:

[4] *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009).

[5] For example, the Council has authority to make recommendations to the Federal Reserve concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Federal Reserve; make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for a financial activity or practice conducted by certain financial companies if the Council determines that such activity or practice could create or increase certain risks; and designate financial market utilities and payment, clearing, and settlement activities that the Council determines are, or are likely to become, systemically important. Dodd-Frank Act sections 115, 120, 804, 12 U.S.C. 5325, 5330, 5463.

[6] Dodd-Frank Act section 112(a)(2), 12 U.S.C. 5322(a)(2).

[7] Dodd-Frank Act section 112(d)(3), 12 U.S.C. 5322(d)(3).

1. How could the potential risk be triggered? For example, could it be triggered by sharp reductions in the valuation of particular classes of financial assets?

2. How could the adverse effects of the potential risk be transmitted to financial markets or market participants? For example, what are the direct or indirect exposures in financial markets to the potential risk?

3. What impact could the potential risk have on the financial system? For example, what could be the scale of its adverse effects on other companies and markets, and would its effects be concentrated or distributed broadly among market participants? This analysis should take into account factors such as existing regulatory requirements or market practices that mitigate potential risks.

4. Could the adverse effects of the potential risk impair the financial system in a manner that could harm the non-financial sector of the U.S. economy?

In this evaluation, the Council will consult with relevant financial regulatory agencies and will take into account existing laws and regulations that may mitigate a potential risk to U.S. financial stability. The Council will also take into account the risk profiles and business models of market participants engaging in the products, activities, or practices under evaluation, and consider available evidence regarding the potential risk. Empirical data may not be available regarding all potential risks, and the type and scope of the Council's analysis will be tailored to the potential risk under consideration.

If a product, activity, or practice creating a potential risk to financial stability is identified, the Council will work with relevant financial regulatory agencies to address the identified risk, as described in section II.b of this appendix.

b. Step Two of Activities-Based Approach: Working With Regulators To Address Identified Risks

If the Council identifies a potential risk to U.S. financial stability in step one of the activities-based approach, the Council will work with the relevant financial regulatory agencies at the federal and state levels to seek the implementation of appropriate actions to address the identified potential risk. The Council will coordinate among its members and member agencies and will follow up on supervisory or regulatory actions to ensure the potential risk is adequately addressed. The goal of this step would be for existing regulators to take appropriate action, such as modifying their regulation or supervision of companies or markets under their jurisdiction in order to mitigate potential risks to U.S. financial stability identified by the Council.[8] If a potential risk identified by the Council relates to a product, activity, or practice arising at a limited number of individual financial companies, the Council nonetheless will prioritize a remedy that addresses the underlying risk across all companies that engage in the relevant activity. If the Council finds that a particular type of financial product could present risks to U.S. financial stability, there may be different approaches existing regulators could take, based on their authorities and the urgency of the risk, such as restricting or prohibiting the offering of that product, or requiring market participants to take additional risk-management steps that address the risks.

If, after engaging with relevant financial regulatory agencies, the Council believes those regulators' actions are inadequate to address the identified potential risk to U.S. financial stability, the Council has authority to make formal public recommendations to primary financial regulatory agencies under section 120 of the Dodd-Frank Act. Under section 120, the Council may provide for more stringent regulation of a financial activity by issuing nonbinding recommendations, following consultation with the primary financial regulatory agency and public notice inviting comments on proposed recommendations, to the primary financial regulatory agency to apply new or heightened standards or safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their jurisdiction.[9] In addition, in any case in which no primary financial regulatory agency exists for the markets or companies conducting financial activities or practices identified by the Council as posing risks, the Council can consider reporting to Congress on recommendations for legislation that would prevent such activities or practices from threatening U.S. financial stability. The Council intends to make recommendations under section 120 only to the extent that its recommendations are consistent with the statutory mandate of the primary financial regulatory agency to which the Council is making the recommendation.

The authority to issue recommendations to primary financial regulatory agencies under section 120 is one of the Council's most formal tools for responding to potential risks to U.S. financial stability. The Council will make these recommendations only if it determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, U.S. financial markets, or low-income, minority, or underserved communities.

In its recommendations under section 120, the Council may suggest broad approaches to address the risks it has identified. When appropriate, the Council may make a more specific recommendation. To promote analytical rigor and avoid duplication, before making any recommendation under section 120, the Council will ascertain whether the relevant primary financial regulatory agency would be expected to perform a cost-benefit analysis of the actions it would take in response to the Council's contemplated recommendation. In cases where the primary financial regulatory agency would not be expected to conduct such an analysis, the Council itself will—prior to making a final recommendation—conduct an analysis, using empirical data, to the extent available, of the benefits and costs of the actions that the primary financial regulatory agency would be expected to take in response to the contemplated recommendation. Where the Council conducts its own such analysis, the specificity of its assessment of benefits and costs would be commensurate with the specificity of the contemplated recommendation. Furthermore, where the Council conducts its own analysis, the Council will make a recommendation under section 120 only if it believes that the results of its assessment of benefits and costs support the recommendation.

Primary financial regulatory agencies have significant experience, knowledge, and expertise that can be useful in determining the most efficient way to address a particular risk within their regulatory jurisdiction. In every case, prior to issuing a recommendation under section 120, the Council will consult with the relevant primary financial regulatory agency and provide notice to the public and opportunity for comment as required by section 120.

III. Analytic Framework for Nonbank Financial Company Determinations

If the Council's collaboration and engagement with the relevant financial regulatory agencies during the activities-based approach does not adequately address a potential threat identified by the Council—or if a potential threat to U.S. financial stability is outside the jurisdiction or authority of financial regulatory agencies—and if the potential threat identified by the Council is one that could be effectively addressed by a Council determination regarding one or more nonbank financial companies, the Council may evaluate one or more nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act, applying the analytic framework described below. This section describes the analysis the Council will conduct in general regarding individual nonbank financial companies that are considered for a potential determination, and section IV of this appendix describes the Council's process for those reviews.

a. Statutory Standards and Considerations

The Council may determine, by a vote of not fewer than two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council, that a nonbank financial company will be supervised by the Federal Reserve and be subject to prudential standards if the Council determines that (1) material financial distress at the nonbank

[8] The Dodd-Frank Act provides that the Council's duties include to recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies and to make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets. Dodd-Frank Act sections 112(a)(2)(F), (K), 12 U.S.C. 5322(a)(2)(F), (K).

[9] Dodd-Frank Act section 120(a), 12 U.S.C. 5330(a).

financial company could pose a threat to the financial stability of the United States (the ''First Determination Standard'') or (2) the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States (the ''Second Determination Standard,'' and, together with the First Determination Standard, the ''Determination Standards'').[10] The analytic framework described below focuses primarily on the First Determination Standard because threats to financial stability (such as asset fire sales or financial market disruptions) are most commonly propagated through a nonbank financial company when it is in distress.

Several relevant terms used in the Dodd-Frank Act are not defined in the statute. The Council intends to interpret the term ''company'' to include any corporation, limited liability company, partnership, business trust, association, or similar organization.[11] In addition, the Council intends to interpret ''nonbank financial company supervised by the Board of Governors'' as including any nonbank financial company that acquires, directly or indirectly, a majority of the assets or liabilities of a company that is subject to a final determination of the Council.[12] The Council intends to interpret the term ''material financial distress'' as a nonbank financial company being in imminent danger of insolvency or defaulting on its financial obligations. The Council intends to interpret the term ''threat to the financial stability of the United States'' as meaning the threat of an impairment of financial intermediation or of financial market functioning that would be sufficient to inflict severe damage on the broader economy. For purposes of considering whether a nonbank financial company could pose a threat to U.S. financial stability under either Determination Standard, the Council intends to assess the company in the context of a period of overall stress in the financial services industry and in a weak macroeconomic environment, with market developments such as increased counterparty defaults, decreased funding availability, and decreased asset prices. The Council believes this is appropriate because in such a context, the risks posed by a nonbank financial company may have a greater effect on U.S. financial stability.

The Dodd-Frank Act requires the Council to consider 10 specific considerations when determining whether a nonbank financial company satisfies either of the Determination Standards. These statutory considerations help the Council to evaluate whether one of the Determination Standards has been met:[13]

- The extent of the leverage of the company;
- the extent and nature of the off-balance-sheet exposures of the company;
- the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;
- the importance of the company as a source of credit for households, businesses, and state and local governments and as a source of liquidity for the U.S. financial system;
- the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
- the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;
- the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;
- the degree to which the company is already regulated by one or more primary financial regulatory agencies;
- the amount and nature of the financial assets of the company; and
- the amount and types of the liabilities of the company, including the degree of reliance on short-term funding.

The statute also requires the Council to take into account any other risk-related factors that the Council deems appropriate. Any determination by the Council will be made based on a company-specific evaluation and an application of the standards and considerations set forth in section 113 of the Dodd-Frank Act, and taking into account qualitative and quantitative information the Council deems relevant to a particular nonbank financial company. The Council anticipates that the information relevant to an in-depth analysis of a nonbank financial company may vary based on the nonbank financial company's characteristics.

The discussion below describes how the Council will apply the Determination Standards in its evaluation of a nonbank financial company, including how the Council will take into account the statutory considerations, and other risk-related factors that the Council will take into account. Due to the unique threat that each nonbank financial company could pose to U.S. financial stability and the nature of the inquiry required by the statutory considerations, the Council expects that its evaluations of nonbank financial companies will be firm-specific and may include quantitative and qualitative information that the Council deems relevant to a particular nonbank financial company. The transmission channels, sample metrics, and other factors set forth below are not exhaustive and may not apply to all nonbank financial companies under evaluation.

b. Transmission Channels

The Council's evaluation of any nonbank financial company under section 113 of the Dodd-Frank Act will seek to determine whether a nonbank financial company meets one of the Determination Standards described above. In its analysis of a nonbank financial company, the Council will assess how the negative effects of the company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could be transmitted to or affect other firms or markets, thereby causing a broader impairment of financial intermediation or of financial market functioning. Such a transmission of risk can occur through various mechanisms, or channels. The Council has identified three transmission channels as most likely to facilitate the transmission of the negative effects of a nonbank financial company's material financial distress, or of the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, to other financial firms and markets: Exposure; asset liquidation; and critical function or service. These three transmission channels are described below. The Council may also consider other relevant channels through which risks could be transmitted from a particular nonbank financial company and thereby pose a threat to U.S. financial stability. The Council will take into account the 10 statutory considerations and any other risk-related factors the Council deems appropriate as part of its evaluation of a nonbank financial company under the three transmission channels and the other factors described below. Further, in its analyses under the transmission channels, the Council will consider applicable factors that may limit the transmission of risk, such as existing regulatory requirements, collateralization, bankruptcy-remote structures, or guarantee funds that reduce counterparties' exposures to the nonbank financial company or mitigate incentives for customers or counterparties to withdraw funding or assets.

Exposure Transmission Channel

Under this transmission channel, the Council will evaluate whether a nonbank financial company's creditors, counterparties, investors, or other market participants have direct or indirect exposure to the nonbank financial company that is significant enough to materially and adversely affect those or other creditors,

[10] If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States based on certain information, the Council may request the Federal Reserve to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the company should be supervised by the Federal Reserve for purposes of Title I of the Dodd-Frank Act. Dodd-Frank Act section 112(d)(4), 12 U.S.C. 5322(d)(4).

[11] The statutory definition of ''nonbank financial company'' excludes bank holding companies and certain other types of companies. Dodd-Frank Act section 102(a)(4), 12 U.S.C. 5311(a)(4).

[12] As a result, if a nonbank financial company subject to a final determination of the Council sells or otherwise transfers a majority of its assets or liabilities, the acquirer will succeed to, and become subject to, the Council's determination. As discussed in section V below, a nonbank financial company that is subject to a final determination of the Council may request a reevaluation of the determination before the next required annual reevaluation, in appropriate cases. Such an acquirer can use this reevaluation process to seek a rescission of the determination upon consummation of its transaction.

[13] Dodd-Frank Act section 113(a)(2), 12 U.S.C. 5323(a)(2). This list of considerations is applicable to U.S. nonbank financial companies. With respect to foreign nonbank financial companies, the Council is required to take into account a similar list of considerations, in some cases limited to the companies' U.S. business or activities. *See* Dodd-Frank Act section 113(b)(2), 12 U.S.C. 5323(b)(2).

counterparties, investors, or other market participants and thereby pose a threat to U.S. financial stability.

The Council expects that its analyses under the exposure transmission channel will generally include the factors described below. The potential threat to U.S. financial stability will generally be greater if the amounts of the exposures are larger; if the terms of the transactions provide less protection for the counterparty; and if the largest counterparties include large financial institutions.

The Council also will consider a company's leverage and size. A company's leverage can amplify the risks posed by exposures, including off-balance sheet exposures, by reducing the company's ability to satisfy its obligations to creditors in the event of its material financial distress. Size is relevant to this analysis, as material financial distress at a larger nonbank financial company would generally transmit risk on a larger scale than distress at a smaller company. Size may be measured by the assets, liabilities, and capital of the firm.

As required by statute, the Council will consider the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse. The Council's analysis will recognize the distinct nature of exposure risks when the company is acting as an agent rather than as principal.[14] In particular, in the case of a nonbank financial company that manages assets on behalf of customers or other third parties, the third parties' direct financial exposures are often to the issuers of the managed assets, rather than to the nonbank financial company managing those assets.

The Council will consider the exposures that counterparties and other market participants have to a nonbank financial company arising from the company's capital markets activities. This assessment includes an evaluation of the company's relationships with other significant nonbank financial companies and significant bank holding companies. In most cases, the Council will consider factors such as the amount and nature of, and counterparties to, the company's:

- Outstanding debt (regardless of term) and other liabilities (such as guaranteed investment contracts issued by an insurance company or Federal Home Loan Bank loans).
- Derivatives transactions (which may be measured on the basis of gross notional amount, net fair value, or potential future exposures).
- Securities financing transactions (*i.e.,* repurchase agreements and securities lending transactions).
- Lines of credit.
- Credit-default swaps outstanding for which the company or an affiliate is the reference entity (generally focusing on single-name credit-default swaps).

Relevant metrics may include the number, size, and financial strength of a nonbank financial company's counterparties, including the proportion of its counterparties' exposure to the nonbank financial company relative to the counterparties' capital. The potential risk arising under this transmission channel depends not only on the number of counterparties that a nonbank financial company has, but also on the importance of that nonbank financial company to its counterparties and the extent to which the counterparties are interconnected with other financial firms, the financial system, and the broader economy. Therefore, the Council will focus on exposures of large financial institutions to the nonbank financial company under review. This analysis will take into account both individual counterparty exposures as well as aggregate exposures of other financial institutions to the company under review. The amount and types of other exposures that counterparties and other market participants have to a nonbank financial company is highly dependent on the nature of the company's business. The Council's analysis will take these other fact-specific considerations into account.

The Council also will consider applicable factors, including existing regulatory requirements, that may mitigate potential risks under the exposure transmission channel. For example, collateralization by high-quality, highly liquid securities, such as U.S. Treasury securities, the use of insurance funds to limit counterparty exposures, or other transactions that reallocate risk to well-capitalized entities, may reduce the potential for certain exposures to serve as a channel for the transmission of risk.

Contagion. The negative effects of the material financial distress of a large, interconnected nonbank financial company are not necessarily limited to the amount of direct losses suffered by the firm's creditors, counterparties, investors, or other market participants. In general, the wider and more interconnected a company's network of financial counterparties, the greater the potential negative effect of the material financial distress of the company. Aggregate exposures to a nonbank financial company can create a potential threat to U.S. financial stability if they lead to contagion among financial institutions and financial markets more broadly. Contagion has the potential to spread distress quickly and seemingly unexpectedly. Such transmission is associated with opaque balance sheets, closely correlated markets, and coordination failures among investors. In such circumstances, fire sales by a highly leveraged and interconnected nonbank financial company may result in a loss of confidence in other financial companies that are perceived to have similar characteristics. The Council will seek evidence regarding the potential for contagion, including relevant industry-specific historical examples and the scope of the company's interconnectedness with large financial institutions, among other factors. Various market-based or regulatory factors can strongly mitigate the risk of contagion. Contagion should be viewed in conjunction with other factors described above when evaluating risk under the exposure transmission channel.

Asset Liquidation Transmission Channel

Under this transmission channel, the Council will consider whether a nonbank financial company holds assets that, if liquidated quickly, could pose a threat to U.S. financial stability by, for example, causing a fall in asset prices that significantly disrupts trading or funding in key markets or causes significant losses or funding problems for other firms with similar holdings. This channel would likely be most relevant for a nonbank financial company that could be forced to liquidate assets quickly due to its funding and liquid asset profile. For example, this could be the case if a nonbank financial company relies heavily on short-term funding. The Council may also consider whether a deterioration in asset pricing or market functioning could pressure other financial firms to sell their holdings of affected assets in order to maintain adequate capital and liquidity, which, in turn, could produce a cycle of asset sales that could lead to further market disruptions. This analysis includes an assessment of any maturity mismatch at the company—the difference between the maturities of the company's assets and liabilities. A company's reliance on short-term funding to finance longer-term positions can subject the company to rollover or refinancing risk that may force it to sell assets rapidly at low market prices. The Council will also consider applicable factors that may mitigate potential risks under the asset liquidation transmission channel. As part of its analysis, the Council will consider the extent to which assets are managed rather than owned by the company.

The Council's analyses of the asset liquidation transmission channel will focus on three central factors, described below.

Liquidity of the company's liabilities. The first factor in the Council's assessment under this transmission channel is the amount and nature of the company's liabilities that are, or could become, short-term in nature. This analysis involves an assessment of the company's liquidity risk. Liquidity risk generally refers to the risk that a company may not have sufficient funding to satisfy its short-term needs. For example, relevant factors may include:

- The company's short-term financial obligations (including outstanding commercial paper).
- Financial arrangements that can be terminated by counterparties and therefore become short-term (including callable debt, derivatives, securities lending, repurchase agreements, and off-balance-sheet exposures).
- Long-term liabilities that may come due in a short-term period.
- Financial transactions that may require the company to provide additional margin or collateral to the counterparty.
- Products that allow customers rapidly to withdraw funds from the company.
- Liabilities related to other collateralized borrowings and deposits.

The Council will quantitatively identify the scale of potential liquidity needs that could plausibly arise at the company. As part of this analysis, the Council will apply counterparty and customer withdrawal rates based on historical examples and other relevant models to assess the scope of

[14] Dodd-Frank Act section 113(a)(2)(F), 12 U.S.C. 5323(a)(2)(F).

plausible withdrawals. In addition, any ability of the company or its financial regulators to impose stays on counterparty terminations or withdrawals is relevant, because it may reduce the company's liquidity needs in an event of material financial distress. The Council also will consider the company's internal estimates of potential liquidity needs in a context of material financial distress.

The company's leverage and short-term debt ratios are relevant to this analysis, as high leverage and reliance on short-term funding can increase the potential for a company to be subject to sudden liquidity strains that force it rapidly to sell assets. Leverage can be measured by the ratio of assets to capital or as a measure of economic risk relative to capital. The latter measurement can better capture the effect of derivatives and other products with embedded leverage on the risk undertaken by a nonbank financial company. Comparisons of leverage to peer financial institutions can help indicate the level of risk at the company. Metrics that may be used to assess leverage include:

- Total assets and total debt measured relative to total equity, which measures financial leverage.
- Derivatives liabilities and off-balance sheet obligations relative to total equity, which may show how much off-balance sheet leverage a nonbank financial company may have.
- Securities financing transactions and funding agreements that provide alternative sources of liquidity or operating income, which indicate the use of operating leverage.
- Changes in leverage ratios, which may indicate that a nonbank financial company is increasing or decreasing its risk profile.

Liquidity of the company's assets. The second factor under the asset liquidation transmission channel is an analysis of the company's assets that the company could rapidly liquidate, if necessary, to satisfy its obligations. In particular, the Council expects that this assessment will focus on the size and liquidity characteristics of the company's investment portfolio. The Council will assess the company's assets, grouped into categories such as highly liquid (for example, cash, U.S. Treasury securities, and U.S. agency mortgage-backed securities) and less-liquid (for example, corporate bonds, non-agency mortgage-backed securities, and mortgages and other loans) to determine if it holds cash instruments or readily marketable securities that could reasonably be expected to have a liquid market in times of broader market stress. To the extent that the company's assets are encumbered, those assets would generally not be considered to be available to satisfy short-term obligations.

Potential fire sale impacts. The third factor in the asset liquidation transmission channel analysis is the potential effects of the company's asset liquidation on markets and market participants. As described above, the Council will assess the scale of potential liquidity needs that could plausibly arise at the company and the amount and nature of financial assets the company could sell to satisfy its obligations. In this step of the asset liquidation transmission channel analysis, the Council will apply quantitative models to assess how the company could satisfy the identified range of potential liquidity needs by rapidly selling its identified liquid assets. To assess this factor, the Council will compare the volume of the company's potential liquidation of particular categories of financial instruments with the average daily trading volume in the United States of those types of instruments. In general, a rapid liquidation of a significant amount of relatively illiquid financial instruments, or instruments that are widely held by other market participants, will have a greater effect on the market than a liquidation of the same amount of highly liquid instruments or instruments that are not widely held. The Council may also conduct an analysis to assess the relative impact of negative shocks to the equity or assets of certain financial institutions on other financial institutions. The Council expects that its analysis will generally focus on potential asset liquidation periods of 30 to 90 days.

The order in which a nonbank financial company may liquidate assets is a factor in the extent of any fire sale risk, but is subject to considerable uncertainties. A company could liquidate a significant portion of its highly liquid assets first, in order to reduce the likelihood that the company would be forced to liquidate illiquid assets in the event of its material financial distress. However, in the event of the company's material financial distress, a company may also be expected to seek to maintain compliance with any applicable risk-based capital ratios and other requirements. Doing so might require a company to sell a mix of assets across a number of asset classes, rather than proceed with the sale of assets in order from most liquid to least liquid. Further, in the event of a significant market disruption, there could be a meaningful first-mover advantage to selling less-liquid assets first. For example, markets for less-liquid assets, such as private and public corporate bonds and asset-backed securities, could be prone to disruption in the event that a seller liquidated a large portion of its portfolio of those assets. Given these potential discounts, in some circumstances a company may be incentivized to sell a portion of its less-liquid assets first and to hold U.S. government securities and agency mortgage-backed securities, which tend to increase in value during a period of market turmoil. To the extent that a company's highly liquid assets are encumbered (for example, under securities financing transactions or as collateral for loans), the company would also need to sell less-liquid assets to satisfy its liquidity needs. Further, a company's holdings of liquid assets could be reduced before the company enters material financial distress. As a result, the Council may take into account company-specific factors in assessing the order in which the company might liquidate assets. One approach the Council may take is to assess the potential effects if the company sells pro rata portions of the more-liquid segments of its investment portfolio (such as cash and highly liquid instruments, U.S. agency securities, investment-grade public corporate debt securities, publicly traded equity securities, and asset backed-securities).

Critical Function or Service Transmission Channel

Under this transmission channel, the Council will consider the potential for a nonbank financial company to become unable or unwilling to provide a critical function or service that is relied upon by market participants and for which there are no ready substitutes and thereby pose a threat to U.S. financial stability. This factor is commonly referred to as ''substitutability.'' Substitutability captures the extent to which other firms could provide similar financial services in a timely manner at a similar price and quantity if a nonbank financial company withdraws from a particular market. Substitutability also captures situations in which a nonbank financial company is the primary or dominant provider of services in a market that the Council determines to be essential to U.S. financial stability. A risk under this transmission channel may be identified if a company provides a critical function or service that may not easily be substitutable. The Council's analysis will also consider applicable factors that may mitigate potential risks under the critical function or service transmission channel.

Concern about a potential lack of substitutability could be greater if a nonbank financial company and its competitors are likely to experience stress at the same time because they are exposed to the same risks. The Council may also analyze the nonbank financial company's activities and critical functions and the importance of those activities and functions to the U.S. financial system and assess how those activities and functions would be performed by the nonbank financial company or other market participants in the event of the nonbank financial company's material financial distress. The Council also will consider the substitutability of critical market functions that the company provides in the United States in the event of material financial distress of a foreign parent company.

The analysis of this channel incorporates a review of the competitive landscape for markets in which a nonbank financial company participates and for the services it provides (including the provision of liquidity to the U.S. financial system, the provision of credit to low-income, minority, or underserved communities, or the provision of credit to households, businesses and state and local governments), the ability of other firms to replace those services, and the nonbank financial company's market share. This analysis may focus on the company's market share in specific product lines and the ability of substitutes to replace a service or function provided by the company. The Council's evaluation of a nonbank financial company's market share regarding a particular product or service may include assessments of the ability of the nonbank financial company's competitors to expand to meet market needs during a period of overall stress in the financial services industry or in a weak macroeconomic environment; the costs that market participants would incur if forced to switch providers; the timeframe within which a disruption in the provision of the product or service would materially affect market participants or market

functioning; and the economic implications of such a disruption.

c. Complexity and Resolvability

The potential threat a nonbank financial company could pose to U.S. financial stability may be mitigated or aggravated by the company's complexity, opacity, or resolvability. In particular, a risk may be aggravated if a nonbank financial company's resolution under ordinary insolvency regimes could disrupt key markets or have a material adverse impact on other financial firms or markets. An evaluation of a nonbank financial company's complexity and resolvability entails an assessment of (1) the complexity of the nonbank financial company's legal, funding, and operational structure, and (2) any obstacles to the rapid and orderly resolution of the nonbank financial company:

- Legal structure factors may include the number of jurisdictions the company operates in, the number of subsidiaries, and the organizational structure.
- Funding structure factors may include the degree of interaffiliate dependency for liquidity and funding (such as intercompany loans or other affiliate support arrangements), payment operation (such as treasury operations), and risk-management.
- Operational structure factors may include the number of employees, the number of U.S. and non-U.S. locations, and the degree of inter-company dependency in regard to financial guarantees and support arrangements, the ability to separate functions and spin off services or business lines, the complexity and resiliency of intercompany and outsourced services and arrangements in resolution, and the likelihood of preserving franchise value in a recovery or resolution scenario.
- Cross-border operational factors may include size and complexity of the company's cross-border operations and impact of potential ring-fencing on an orderly resolution.

Factors that would tend to increase the risk associated with a company's complexity and resolvability include large size or scope of activities; a complex legal or operational structure; multi-jurisdictional operations and regulatory regimes; complex funding structures; the potential impact of a loss of key personnel; and shared services among affiliates. The opacity of a firm's structure—if the firm's structure and operations cannot readily or easily be determined—may present an obstacle to resolution.

d. Existing Regulatory Scrutiny

As noted above, one of the considerations the Council is statutorily required to take into account in making a determination under section 113 of the Dodd-Frank Act is the degree to which the nonbank financial company is already regulated by one or more primary financial regulatory agencies.[15] In its analysis of this statutory consideration, the Council will focus on the extent to which existing regulation of the company has mitigated the potential risks to financial stability identified by the Council. For example, factors that may be used to assess existing regulatory scrutiny include:

- The extent to which the company's primary financial regulator has imposed risk-management standards such as capital, liquidity, and reporting requirements, as relevant to the type of company, and has authority to supervise, examine, and bring enforcement actions, with respect to the company and its affiliates.
- Regulators' processes for inter-regulator coordination.
- For non-U.S. entities, the extent to which the company is supervised and subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority.

e. Benefits and Costs of Determination; Likelihood of Material Financial Distress

Determining whether the expected benefits of a potential Council determination justify the expected costs is necessary to ensure that the Council's actions are expected to provide a net benefit to U.S. financial stability and are consistent with thoughtful decisionmaking.[16] Financial stability benefits may be difficult to quantify, and some of the costs may be difficult to forecast with precision. When possible, the Council will quantify reasonably estimable benefits and costs, using ranges, as appropriate, and based on empirical data when available. If such benefits or costs cannot be quantified in this manner, the Council will explain why such benefits or costs could not be quantified. The Council also expects to consider benefits and costs qualitatively.[17] To the extent feasible, the Council will attempt to assess the relative importance of any such qualitative elements. The Council will make a determination under section 113 only if the expected benefits to financial stability from Federal Reserve supervision and prudential standards justify the expected costs that the determination would impose. As part of this analysis, the Council will assess the likelihood of a firm's material financial distress, in order to assess the extent to which a determination may promote U.S. financial stability.

The key elements of regulatory analysis include (1) a statement of the need for the proposed action, (2) an examination of alternative approaches, and (3) an evaluation of the benefits and costs (quantitative and qualitative) of the proposed action and the main alternatives.[18] The Council will conduct this analysis only in cases where the Council is concluding that the company meets one of the standards for a determination by the Council under section 113 of the Dodd-Frank Act, because in other cases doing so would not affect the outcome of the Council's analysis.

Benefits. With respect to the benefits of a Council determination, the Council will consider the benefits of the determination itself, both to (1) the U.S. financial system and long-term economic growth and (2) the nonbank financial company due to additional regulatory requirements resulting from the determination, particularly the prudential standards adopted by the Federal Reserve under section 165 of the Dodd-Frank Act.

One of the Council's statutory purposes is to respond to emerging threats to the stability of the U.S. financial system.[19] The primary intended benefit of a determination under section 113 of the Dodd-Frank Act is a reduction in the likelihood or severity of a financial crisis. Therefore, the Council will consider potential benefits to the U.S. financial system and the U.S. economy arising from a Council determination. To the extent that a Council determination reduces the likelihood or severity of a potential financial crisis, the determination could enhance financial stability and mitigate the severity of economic downturns. The Council may use various measures of systemic risk to assess any improvement in financial stability. Such measures include S-Risk (which attempts to quantify the amount of capital a financial firm would need to raise in order to function normally in the event of a severe financial crisis), conditional value at risk, and certain estimates of fire sale risk, among others. To assess the benefit to the U.S. financial system and the U.S. economy from a determination, the Council may also consider historical analogues to the nonbank under review. In addition, the Council may compare the risks to financial stability posed by a particular nonbank to the risks posed by large bank holding companies, in order to produce an assessment of the relative risks the company may pose. Further, the loss of any implicit ''too big to fail'' or similar subsidy would be considered a benefit to the economy, even if it increases the nonbank financial company's cost of capital.

Analysis of the benefits of a determination for the relevant nonbank financial company may include those arising directly from the Council's determination as well as any benefits arising from anticipated new or increased requirements resulting from the determination, such as additional supervision and enhanced capital, liquidity, or risk-management requirements. For example, a nonbank financial company subject to a Council determination may benefit from a lower cost of capital or higher credit ratings upon meeting its post-determination regulatory requirements.

Costs. With respect to the costs of a Council determination, the Council will consider the costs of the determination itself, both to (1) the nonbank financial company due to additional regulatory requirements resulting from the determination, including the costs of the prudential standards adopted by the Federal Reserve under section 165 of the Dodd Frank Act; and (2) the U.S. economy.

[15] Dodd-Frank Act section 113(a)(2)(H), 12 U.S.C. 5323(a)(2)(H).

[16] *See MetLife, Inc.* v. *Financial Stability Oversight Council,* 177 F. Supp.3d 219, 242 (D.D.C. 2016) (quoting 12 U.S.C. 5323(a)(2)(K) and *Michigan* v. *Environmental Protection Agency,* 135 S. Ct. 2699, 2707 (2015)).

[17] The Council will also consider non-quantified benefits and costs. *See* Office of Management and Budget Circular A–4 (Sept. 17, 2003), section (E) (Developing Benefit and Cost Estimates) (7).

[18] *See* Office of Management and Budget Circular A–4 (Sept. 17, 2003).

[19] Dodd-Frank Act section 112(a)(1)(C), 12 U.S.C. 5322(a)(1)(C).

The Council will consider costs to the company arising from anticipated new or increased regulatory requirements resulting from the determination related to:

- Risk-management requirements, such as the costs of capital planning and stress testing.
- Supervision and examination, such as compliance costs to the firm of additional examination and supervision.
- Increased capital requirements, after accounting for offsetting benefits to taxpayers and to the holders of the firm's other liabilities.
- Liquidity requirements, such as the opportunity cost from any requirement to hold additional high-quality liquid assets, relative to the company's current investment portfolio.

Because the Federal Reserve is required to tailor prudential standards to a nonbank financial company subject to a Council determination after the Council has made a determination regarding the company, the new regulatory requirements that result from the Council's determination will not be known to the Council during its analysis of the company. In cases where the nonbank financial company under review primarily engages in bank-like activities, the Council may consider, as a proxy, the costs that would be imposed on the nonbank if the Federal Reserve imposed prudential standards similar to those imposed on bank holding companies with at least $250 billion in total consolidated assets under section 165 of the Dodd-Frank Act.[20]

The Council also will consider the cost of a determination under section 113 of the Dodd-Frank Act to the U.S. economy by assessing the impact of the determination on the availability and cost of credit or financial products in relevant U.S. markets. To the extent that the markets in which the relevant nonbank participates have low concentration, the impact that the determination regarding one firm would have on credit conditions would generally be immaterial. However, if the relevant markets are concentrated, a Council determination regarding a significant market participant could have a material impact on credit conditions in that market. As part of this analysis, the Council may also consider the extent to which any reduction in financial services provided by the nonbank financial company under review would be offset by other market participants.

Likelihood of Material Financial Distress. As part of the assessment of the overall impact of a Council determination for any company under review under the First Determination Standard, the Council will assess the likelihood of the company's material financial distress based on its vulnerability to a range of factors. For example, these factors may include leverage (both on- and off-balance sheet), potential risks associated with asset reevaluations (whether such reevaluations arise from market disruptions or severe macroeconomic conditions), reliance on short-term funding or other fragile funding markets, maturity transformation, and risks from exposures to counterparties or other market participants. This assessment may rely upon historical examples regarding the characteristics of financial companies that have experienced financial distress, but may also consider other risks that do not have historical precedent. The Council's analysis of the vulnerability of a nonbank financial company to material financial distress will be conducted taking into account a period of overall stress in the financial services industry and a weak macroeconomic environment. The Council may also consider the results of any stress tests that have previously been conducted by the company or by its primary financial regulatory agency.

IV. The Determination Process

As described in section II above, the Council will prioritize an activities-based approach for identifying, assessing, and addressing potential risks to financial stability. However, if a potential risk or threat to U.S. financial stability cannot be adequately addressed through an activities-based approach, the Council may consider a nonbank financial company for a potential determination under section 113 of the Dodd-Frank Act. The Council anticipates it would consider a nonbank financial company for a potential determination under section 113 only in rare instances, such as if the products, activities, or practices of a company that pose a potential threat to U.S. financial stability are outside the jurisdiction or authority of financial regulatory agencies. The Council expects generally to follow a two-stage process of evaluation and analysis, as described below.

In the first stage of the process (''Stage 1''), nonbank financial companies identified as potentially posing risks to U.S. financial stability will be notified and subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will permit, but not require, the company to submit relevant information. The Council will also consult with the primary financial regulatory agency or home country supervisor, as appropriate. This approach will enable the Council to fulfill its statutory obligation to rely whenever possible on information available through the Office of Financial Research (the ''OFR''), Council member agencies, or the nonbank financial company's primary financial regulatory agencies before requiring the submission of reports from any nonbank financial company.[21]

Following Stage 1, nonbank financial companies that are selected for additional review will receive notice that they are being considered for a proposed determination that the company could pose a threat to U.S. financial stability (a ''Proposed Determination'') and will be subject to in-depth evaluation during the second stage of review (''Stage 2''). Stage 2 will involve the evaluation of additional information collected directly from the nonbank financial company. At the end of Stage 2, the Council may consider whether to make a Proposed Determination with respect to the nonbank financial company. If a Proposed Determination is made by the Council, the nonbank financial company may request a hearing in accordance with section 113(e) of the Dodd-Frank Act and § 1310.21(c) of the Council's rule.[22] After making a Proposed Determination and holding any written or oral hearing if requested, the Council may vote to make a final determination.

a. Stage 1: Preliminary Evaluation of Nonbank Financial Companies

Stage 1 involves a preliminary analysis of nonbank financial companies to assess the risks they could pose to U.S. financial stability.

Identification of Company for Review in Stage 1

If, as described in section II, the Council's consultation with and any recommendations to a nonbank financial company's primary financial regulatory agency do not adequately address a potential risk identified by the Council, the Council may evaluate one or more individual nonbank financial companies for an entity-specific determination under section 113 of the Dodd-Frank Act. The Council will vote to commence review of a nonbank financial company in Stage 1. When evaluating the potential risks associated with a nonbank financial company, the Council may consider the company and its subsidiaries together. This approach enables the Council to consider potential risks arising across the consolidated organization, while retaining the ability to make a determination regarding either the parent or any individual nonbank financial company subsidiary (or neither), depending on which entity the Council determines could pose a threat to financial stability.

Engagement With Company and Regulators in Stage 1

The Council will provide a notice to any nonbank financial company under review in Stage 1. In Stage 1, the Council will consider available public and regulatory information; in addition, a company under review in Stage 1 may submit to the Council any information it deems relevant to the Council's evaluation and may, upon request, meet with staff of Council members and member agencies who are leading the Council's analysis. In order to reduce the burdens of review on the company, the Council will not require the company to submit information during Stage 1. In addition, staff representing Council members will, upon request, provide the company with a list of the primary public sources of information being considered during the Stage 1 analysis, so that the company has an opportunity to understand the information the Council may rely upon during Stage 1. Through this engagement, the Council will seek to enable the company under review to understand the focus of the Council's analysis, which may enable the company to act to mitigate any risks to financial stability and thereby potentially avoid becoming subject to a Council determination.

[20] Dodd-Frank Act section 165, 12 U.S.C. 5365.

[21] *See* Dodd-Frank Act section 112(d)(3), 12 U.S.C. 5322(d)(3).

[22] *See* 12 CFR 1310.21(c).

During the discussions in Stage 1 with the company, the Council intends for staff of Council members and member agencies to explain to the company the key risks that have been identified in the analysis. Because the review of the company is preliminary and continues to change until the Council makes a final determination, these identified risks may shift over time.

The Council will also consider in Stage 1 information available from relevant existing regulators of the company. Under the Dodd-Frank Act, the Council is required to consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for a determination before the Council makes any final determination with respect to such company.[23] For any company under review in Stage 1 that is regulated by a primary financial regulatory agency or home country supervisor, the Council will notify the regulator or supervisor that the company is under review no later than such time as the company is notified. As part of that consultation process, the Council will consult with the primary financial regulatory agency, if any, of each significant subsidiary of the nonbank financial company, to the extent the Council deems appropriate in Stage 1. The Council will actively solicit the regulator's views regarding risks at the company and potential mitigants. In order to enable the regulator to provide relevant information, the Council will share its preliminary views regarding potential risks at the company, and request that the regulator provide information regarding those specific risks, including whether the risks are adequately mitigated by factors such as existing regulation or the company's business practices. During the determination process, the Council will continue to encourage the regulator to address any risks to U.S. financial stability using the regulator's existing authorities; if the Council believes the regulator's actions adequately address the potential risks to U.S. financial stability the Council has identified, the Council may discontinue its consideration of the firm for a potential determination under section 113 of the Dodd-Frank Act.

Based on the preliminary evaluation in Stage 1, the Council may vote to commence a more detailed analysis of the company by advancing the company to Stage 2, or it may decide not to evaluate the company further. If the Council determines not to advance a company that has been reviewed in Stage 1 to Stage 2, the Council will notify the company in writing of the Council's decision. The notice will clarify that a decision not to advance the company from Stage 1 to Stage 2 at that time does not preclude the Council from reinitiating review of the company in Stage 1. For example, the Council may reinitiate review of the company if material changes affecting the firm merit further evaluation.

[23] Dodd-Frank Act section 113(g), 12 U.S.C. 5323(g).

b. Stage 2: In-Depth Evaluation

Stage 2 involves an in-depth evaluation of any company that the Council has determined merits additional review.

In Stage 2, the Council will review the relevant company using information collected directly from the nonbank financial company, through the OFR, as well as public and regulatory information. The review will focus on whether the nonbank financial company could pose a threat to U.S. financial stability because of the company's material financial distress or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company. The Council expects that the transmission channels and the other factors described above will be used to evaluate a nonbank financial company's potential to pose a threat to U.S. financial stability.

Engagement With Company and Regulators in Stage 2

Each nonbank financial company to be evaluated in Stage 2 will receive a notice (a ''Notice of Consideration'') that the nonbank financial company is under consideration for a Proposed Determination. The Council also will submit to the company a request that the company provide information that the Council deems relevant to the Council's evaluation, and the nonbank financial company will be provided an opportunity to submit written materials to the Council.[24] This information will generally be collected by the OFR. Before requiring the submission of reports from any nonbank financial company that is regulated by a Council member agency or any primary financial regulatory agency, the Council, acting through the OFR, will coordinate with such agencies and will, whenever possible, rely on information available from the OFR or such agencies. Council members and their agencies and staffs will maintain the confidentiality of such information in accordance with applicable law. During Stage 2, the company may also submit any other information that it deems relevant to the Council's evaluation. Information considered by the Council includes details regarding the company's financial activities, legal structure, liabilities, counterparty exposures, resolvability, and existing regulatory oversight.

Information requests likely will involve both qualitative and quantitative data. Information relevant to the Council's analysis may include confidential business information such as detailed information regarding financial assets, terms of funding arrangements, counterparty exposure or position data, strategic plans, and interaffiliate transactions.

The Council will make staff representing Council members available to meet with the representatives of any company that enters Stage 2, to explain the evaluation process and the framework for the Council's analysis. If the analysis in Stage 1 has identified specific aspects of the company's operations or activities as the primary focus for the evaluation, staff will notify the company of those issues, although the issues will be subject to change based on the ongoing analysis. In addition, the Council expects that its Deputies Committee[25] will grant a request to meet with a company in Stage 2 to allow the company to present any information or arguments it deems relevant to the Council's evaluation.

[24] *See* 12 CFR 1310.21(a).

During Stage 2 the Council will also seek to continue its consultation with the company's primary financial regulatory agency or home country supervisor in a timely manner before the Council makes any proposed or final determination with respect to such nonbank financial company. The Council will continue to encourage the regulator during the determination process to address any risks to U.S. financial stability using the regulator's existing authorities; as noted above, if the Council believes the regulator's actions adequately address the potential risks to U.S. financial stability the Council has identified, the Council may discontinue its consideration of the firm for a potential determination under section 113 of the Dodd-Frank Act.

Before making a Proposed Determination regarding a nonbank financial company, the Council will notify the company when the Council believes that the evidentiary record regarding such nonbank financial company is complete. The Council will notify any nonbank financial company in Stage 2 if the nonbank financial company ceases to be considered for a determination. Any nonbank financial company that ceases to be considered at any time in the Council's determination process may be considered for a Proposed Determination in the future at the Council's discretion, consistent with the processes described above.

c. Proposed and Final Determination

Proposed Determination

Based on the analysis performed in Stage 2, a nonbank financial company may be considered for a Proposed Determination. A proposed determination requires a vote of two-thirds of the voting members of the Council then serving, including an affirmative vote by the Chairperson of the Council.[26] Following a Proposed Determination, the Council will issue a written notice of the Proposed Determination to the nonbank financial company, which will include an explanation of the basis of the Proposed Determination.[27] Promptly after the Council votes to make a proposed determination regarding a company, the Council will provide the company's primary financial regulatory agency or home country supervisor (subject to appropriate protections for confidential information) with the nonpublic written explanation of the basis of the Council's proposed or final determination. The Council also will publish the explanation of the basis of the Proposed Determination, subject to redactions to

[25] The Council's Deputies Committee is composed of senior officials from each Council member and member agency. It coordinates and oversees the work of the Council's other interagency staff committees.

[26] 12 CFR 1310.10(b).

[27] Dodd-Frank Act section 113(e)(1), 12 U.S.C. 5323(e)(1).

protect confidential information from the company or its regulators.

Hearing

A nonbank financial company that is subject to a Proposed Determination may request a nonpublic hearing to contest the Proposed Determination in accordance with section 113(e) of the Dodd-Frank Act. If the nonbank financial company requests a hearing in accordance with the procedures set forth in § 1310.21(c) of the Council's rule,[28] the Council will set a time and place for such hearing. The Council has published hearing procedures on its website.[29] In light of the short statutory timeframe for conducting a hearing, and the fact that the purpose of the hearing is to benefit the company, if a company requests that the Council waive the statutory deadline for conducting the hearing, the Council may do so in appropriate circumstances.

Final Determination

After making a Proposed Determination and holding any requested written or oral hearing, the Council may, by a vote of not fewer than two-thirds of the voting members of the Council then serving (including an affirmative vote by the Chairperson of the Council), make a final determination that the company will be subject to supervision by the Federal Reserve and prudential standards. If the Council makes a final determination, it will provide the company with a written notice of the Council's final determination, including an explanation of the basis for the Council's decision.[30] The Council will also provide the company's primary financial regulatory agency or home country supervisor (subject to appropriate protections for confidential information) with the nonpublic written explanation of the basis of the Council's final determination. The Council expects that its explanation of the final basis for any determination will highlight the key risks that led to the determination and include clear guidance regarding the factors that were most important in the Council's determination. When practicable and consistent with the purposes of the determination process, the Council will provide a nonbank financial company with a notice of a final determination at least one business day before publicly announcing the determination pursuant to § 1310.21(d)(3), § 1310.21(e)(3), or § 1310.22(d)(3) of the Council's rule.[31] In accordance with section 113(h) of the Dodd-Frank Act, a nonbank financial company that is subject to a final determination may bring an action in U.S. district court for an order requiring that the determination be rescinded.

The Council does not intend to publicly announce the name of any nonbank financial company that is under evaluation prior to a final determination with respect to such company. However, if a company that is under review in Stage 1 or Stage 2 publicly announces the status of its review by the Council, the Council intends, upon the request of a third party, to confirm the status of the company's review. In addition, the Council will publicly release the explanation of the Council's basis for any nonbank financial company determination or rescission of a determination. The Council is subject to statutory and regulatory requirements to maintain the confidentiality of certain information submitted to it by a nonbank financial company or its regulators.[32] In light of these confidentiality obligations, such confidential information will be redacted from the materials that the Council makes publicly available.

V. Annual Reevaluations of Nonbank Financial Company Determinations

After the Council makes a final determination regarding a company, the Council intends to encourage the company or its regulators to take steps to mitigate the potential risks identified in the Council's written explanation of the basis for its final determination. Except in cases where new material risks arise over time, if a company adequately addresses the potential risks identified in writing by the Council at the time of the final determination and in subsequent reevaluations, the Council should generally be expected to rescind its determination regarding the company.

For any nonbank financial company that is subject to a final determination, the Council is required to reevaluate the determination at least annually, and to rescind the determination if the Council determines that the company no longer meets the statutory standards for a determination. The Council may also consider a request from a company for a reevaluation before the next required annual reevaluation, in the case of an extraordinary change that materially decreases the threat the nonbank financial company could pose to U.S. financial stability.[33]

The Council applies the same standards of review in its annual reevaluations as the standard for an initial determination regarding a nonbank financial company: Either the company's material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the company's activities, could pose a threat to U.S. financial stability. If the Council determines that the company no longer meets those standards, the Council will rescind its determination.

The Council's annual reevaluations generally assess whether any material changes since the previous reevaluation and since the determination justify a rescission of the determination, based on the same transmission channels and other factors that are considered during a determination decision. The Council expects that its reevaluation process will focus on whether any material changes—including changes at the company, changes in its markets or its regulation, changes in the Council's own analysis, or otherwise—result in the company no longer meeting the standard for a determination. In light of the frequent reevaluations, the Council's analyses will generally focus on changes since the Council's previous review, but the ultimate question the Council will seek to assess is whether changes in the aggregate since the Council's determination regarding the company have caused the company to cease meeting the Determination Standards. The Council expects that its analysis in its annual reevaluations will generally be organized around the three transmission channels described above as well as existing regulatory scrutiny and the company's complexity and resolvability.

Before the Council's annual reevaluation of a determination regarding a nonbank financial company, the Council will provide the company with an opportunity to meet with staff of Council members and member agencies to discuss the scope and process for the review and to present information regarding any change that may be relevant to the threat the company could pose to financial stability. Staff of Council members and member agencies will also be available to meet with the company during the annual reevaluation, at the company's request. In addition, during an annual reevaluation, a company may submit any written information to the Council the company considers relevant to the Council's analysis. During annual reevaluations, companies are encouraged to submit information regarding any changes related to the company's risk profile that mitigate the potential risks previously identified by the Council. Such changes could include updates regarding company restructurings, regulatory developments, market changes, or other factors. If the company has taken steps to address the potential risks previously identified by the Council, the Council will assess whether those risks have been adequately mitigated to merit a rescission of the determination regarding the company. If the company explains in detail potential changes it could make to its business to address the potential risks previously identified by the Council, staff of Council members and member agencies will endeavor to provide their feedback on the extent to which those changes may address the potential risks.

If a company contests the Council's determination during the Council's annual reevaluation, the Council will vote on whether to rescind the determination and provide the company, its primary financial regulatory agency, and the primary financial regulatory agency of its significant subsidiaries with a notice explaining the primary basis for any decision not to rescind the determination. If the Council does not rescind the determination, the written notice provided to the company will address each of the material factors raised by the company in its submissions to the Council contesting the determination during the annual reevaluation. The written notice from the Council will also explain in detail why the

[28] *See* 12 CFR 1310.21(c).

[29] Financial Stability Oversight Council Hearing Procedures for Proceedings Under Title I or Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, available at *https://www.treasury.gov/initiatives/fsoc/designations/Pages/Hearing-Procedures.aspx.*

[30] Dodd-Frank Act section 113(e)(3), 12 U.S.C. 5323(e)(3); *see also* 12 CFR 1310.21(d)(2) and (e)(2).

[31] *See* 12 CFR 1310.21(d)(3) and (e)(3) and 1310.22(d)(3).

[32] *See* Dodd-Frank Act section 112(d)(5), 12 U.S.C. 5322(d)(5); *see also* 12 CFR 1310.20(e).

[33] *See* note 12 above.

Council did not find that the company no longer met the standard for a determination under section 113 of the Dodd-Frank Act. In general, due to the sensitive nature of its analyses in annual reevaluations, the Council may not in all cases publicly release the written findings that it provides to the company.

Finally, the Council will provide each nonbank financial company subject to a Council determination with an opportunity for an oral hearing before the Council once every five years at which the company can contest the determination.

Dated: December 9, 2019.

Howard Adler,

Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of the Treasury.

[FR Doc. 2019–27108 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–25–P–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0912; Product Identifier 2019–NE–33–AD; Amendment 39–21011; AD 2019–25–13]

RIN 2120–AA64

Airworthiness Directives; Engine Alliance Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with a certain low-pressure compressor (LPC) 1st-stage fan blade installed. This AD requires an ultrasonic inspection of the affected LPC 1st-stage fan blades and replacement of any affected fan blades that fail the inspection. This AD was prompted by a report of an in-flight shutdown (IFSD) of an engine due to the fracture of multiple fan blades. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 14, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 14, 2020.

The FAA must receive comments on this AD by February 13, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Engine Alliance, 411 Silver Lane, East Hartford, CT, 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliianceportal.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0912.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0912; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA received a report of an IFSD that occurred during a revenue flight on March 10, 2019. The IFSD resulted from the fracture of two LPC 1st-stage fan blades. After an analysis of these fractures, the manufacturer determined the fan blades experienced cracks that originated on the internal surface of the convex airfoil and propagated to the point of failure. The cracks originated in a microtexture area that can result in a low-cycle fatigue debit that may allow a crack to initiate and propagate to failure. This condition, if not addressed, could result in uncontained fan blade release, damage to the engine, and damage to the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EA Service Bulletin (SB) EAGP7–A72–426, dated September 30, 2019. The SB describes procedures for performing an ultrasonic inspection of the LPC 1st-stage fan blades. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is issuing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires an ultrasonic inspection of the affected LPC 1st-stage fan blades and replacement of any affected fan blades that fail the inspection.

Interim Action

The FAA considers this AD interim action. The root cause of the LPC 1st-stage fan blade fracture is still undetermined and the FAA will consider further rulemaking depending on the results of the investigation.

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reason stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0912 and Product Identifier 2019–NE–33–AD at the

beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this final rule.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 0 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Perform ultrasonic inspection for one set of blades.	8 work-hours × $85 per hour = $680	$0	$680	$0

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace fan blade	4 work-hours × $85 per hour = $340	$190,000	$190,340

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–25–13 Engine Alliance: Amendment 39–21011; Docket No. FAA–2019–0912; Product Identifier 2019–NE–33–AD.

(a) Effective Date

This AD is effective January 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Engine Alliance (EA) GP7270 and GP7277 model turbofan engines with low-pressure compressor (LPC) 1st-stage fan blades, part number (P/N) 5700531, 5702931, 5702931CL1, or 5702931CL2, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of an in-flight shutdown of an engine due to the fracture of multiple LPC 1st-stage fan blades. The FAA is issuing this AD to prevent failure of the fan blade. The unsafe condition, if not addressed, could result in uncontained fan blade release, damage to the engine, and damage to the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For engines with affected LPC 1st-stage fan blades that have 3,250 or more flight cycles (FCs) since new as of the effective date of this AD, within 250 FCs after the effective date of this AD, perform an ultrasonic inspection of the LPC 1st-stage fan blades in accordance with the Accomplishment Instructions, ''For Fan Blades Installed In An Engine,'' paragraph 1, or ''For Fan Blades Not Installed In an Engine,'' paragraph 1, as applicable, of EA Service Bulletin (SB) EAGP7–A72–426, dated September 30, 2019.

(2) If the ultrasonic inspection of the affected fan blades results in a rejectable ultrasonic indication, remove the fan blade from service and replace with a part eligible for installation before further flight.

Note 1 to paragraph (g)(2): Guidance on determining a rejectable ultrasonic indication can be found in Non-Destructive Inspection Procedure, NDIP–1205, Revision 1—GP7000 1st Stage LPC Rotor (Fan) Blade Assembly Airfoil Ultrasonic Inspection for Cracks (Fan Blades installed or uninstalled), (''NDIP–1205''), dated September 23, 2019.

(h) No Reporting Requirement

No reporting requirement contained within NDIP–1205 is required by this AD.

(i) Credit for Previous Actions

You may take credit for the ultrasonic inspection required by paragraph (g)(1) of this AD if you performed the inspection before the effective date of this AD using NDIP–1205, Revision 1, dated September 23, 2019, or Original Issue, dated August 30, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Matthew Smith, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7735; fax: 781–238–7199; email: *Matthew.C.Smith@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Engine Alliance (EA) Service Bulletin EAGP7–A72–426, dated September 30, 2019.

(ii) [Reserved]

(3) For EA service information identified in this AD, contact Engine Alliance, 411 Silver Lane, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* website: *www.enginealliance portal.com.*

(4) You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on December 12, 2019.

Robert J. Ganley,

Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–27889 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0519; Product Identifier 2019–NM–089–AD; Amendment 39–21005; AD 2019–24–16]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–16–08, which applied to certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, and –100 ECJ airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. AD 2017–16–08 required revising the existing maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD also adds airplanes to the applicability. This AD was prompted by the FAA's determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of October 11, 2017 (82 FR 42021, September 6, 2017).

ADDRESSES: For service information identified in this final rule, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brazil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br*; internet *https://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0519.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0519; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

SUPPLEMENTARY INFORMATION:

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian AD 2019–05–02, effective May 2, 2019; corrected July 1, 2019 (''Brazilian AD

2019–05–02'') (also referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, –100 SR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. Model ERJ 190–100SR airplanes are not on the U.S. Register; this AD therefore does not include those airplanes in the applicability. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0519.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–16–08, Amendment 39–18985 (82 FR 42021, September 6, 2017) (''AD 2017–16–08''). AD 2017–16–08 applied to certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ and –100 IGW airplanes and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. The NPRM published in the **Federal Register** on July 5, 2019 (84 FR 32101). The NPRM was prompted by the FAA's determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The NPRM also proposed to add airplanes to the applicability. The FAA is issuing this AD to address fatigue cracking of structural components and to address failure of certain system components, which could result in reduced structural integrity and system reliability of the airplane. See the MCAI for additional background information.

Action Since the NPRM Was Issued

Since the NPRM was issued ANAC published a correction to Brazilian AD 2019–05–02 to clarify that the initial compliance times identified as ''Threshold'' or ''T'' in EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 12, dated September 27, 2018 (''EMBRAER 190/195 MRB–1928, Revision 12''), are expressed in total flight cycles and total flight hours. The FAA has revised paragraph (i)(1)(i) of this AD to state ''For the purposes of this AD, the initial compliance times (identified as 'Threshold' or 'T' in EMBRAER 190/195 MRB–1928, Revision 12) are expressed in 'total flight cycles' or 'total flight hours,' as applicable.''

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comment received on the NPRM and the FAA's response to that comment.

Request for Credit for Previously Accomplished Actions

Embraer requested that operators be allowed to substitute the last accomplishment of task 53–23–001–0001, which was included in Revision 11 and earlier of EMBRAER 190/195 MRB–1928, for the initial accomplishment of task 53–53–001–0004, which is included in EMBRAER 190/195 MRB–1928, Revision 12. Embraer justified its request by providing a copy of Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019. The commenter explained that task 53–23–001–0004 was created for EMBRAER 190/195 MRB–1928, Revision 12, by splitting an existing task from previous revisions of EMBRAER 190/195 MRB–1928 in order to increase the interval for certain parts of the task, reducing the frequency of access in areas that are difficult to access. In EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 11, and earlier, task 53–23–001–0001 included the same inspection as task 53–23–001–0004. ANAC granted Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019, to provide credit for a one time accomplishment of task 53–23–001–0001 as a substitution for the initial accomplishment of task 53–23–001–0004, provided the task was accomplished within 5,000 flight cycles since the last accomplishment.

The FAA agrees with the commenter's request for the reason provided and has included Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019, in paragraph (k)(1)(iii) of this AD to allow accomplishment of task 53–23–001–0001 after the effective date of this AD as a substitution for the initial accomplishment of task 53–23–001–0004, provided this task was accomplished within 5,000 flight cycles since it was last accomplished.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

Embraer has issued Appendix A—Airworthiness Limitations (AL), to the EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 12, dated September 27, 2018.

Embraer has also issued Appendix A—Airworthiness Limitations (AL), to the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 8, dated October 10, 2018.

This AD also requires the following documents, which the Director of the Federal Register approved for incorporation by reference as of October 11, 2017 (82 FR 42021, September 6, 2017).

- Appendix A—Airworthiness Limitations (AL), of the EMBRAER ERJ 190/195 Maintenance Review Board Report, MRB–1928, Revision 9, dated August 14, 2015.
- Appendix A—Airworthiness Limitations (AL), of the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 4, dated July 14, 2014.
- EMBRAER MPG—Temporary Revision 4–2, dated February 13, 2015.
- EMBRAER MPG—Temporary Revision 4–3, dated October 30, 2015.
- EMBRAER MRB—Temporary Revision 9–1, dated October 27, 2015.
- EMBRAER MRB—Temporary Revision 9–3, dated October 27, 2015

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 107 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD.

The actions that are required by AD 2017–16–08 and retained in this final rule take about 1 work-hour per product, at an average labor rate of $85 per work hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2017–16–08 is $85 per product.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency

recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

The FAA determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–16–08, Amendment 39–18985 (82 FR 42021, September 6, 2017), and adding the following new AD:

2019–24–16 Embraer S.A.: Amendment 39–21005; Docket No. FAA–2019–0519; Product Identifier 2019–NM–089–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

This AD replaces AD 2017–16–08, Amendment 39–18985 (82 FR 42021, September 6, 2017) (''AD 2017–16–08'').

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; serial numbers 19000002, 19000004, 19000006 through 19000213 inclusive, 19000215 through 19000276 inclusive, 19000278 through 19000466 inclusive, 19000468 through 19000525 inclusive, and 19000527 through 19000758 inclusive.

(d) Subject

Air Transport Association (ATA) of America Codes 27, Flight controls; 28, Fuel; 52, Doors; 53, Fuselage; 54, Nacelles/pylons; 55, Stabilizers; 57, Wings; 71, Powerplant; and 78, Exhaust.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking of structural components and to address failure of certain system components, which could result in reduced structural integrity and system reliability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2017–16–08, with no changes. For airplanes having serial numbers 19000002, 19000004, 19000006 through 19000213 inclusive, 19000215 through 19000276 inclusive, 19000278 through 19000466 inclusive, 19000468 through 19000525 inclusive, and 19000527 through 19000696 inclusive, do the revision required by paragraph (g)(1) or (2) of this AD, as applicable.

(1) For Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW airplanes: Within 90 days after October 11, 2017 (the effective date of AD 2017–16–08), revise the existing maintenance or inspection program, as applicable, to incorporate the tasks specified in Part 2—Airworthiness Limitation Inspections—Structures, of Appendix A—Airworthiness Limitations (AL), of the EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 9, dated August 14, 2015 (''MRB–1928, Revision 9''); EMBRAER MRB—Temporary Revision 9–1, dated October 27, 2015, to Part 2—Airworthiness Limitation Inspections—Structures, and Part 4—Life Limited Items, of Appendix A—Airworthiness Limitations (AL), of MRB–1928, Revision 9; and EMBRAER MRB—Temporary Revision 9–3, dated October 27, 2015, to Part 2—Airworthiness Limitation Inspections—Structures, of Appendix A—Airworthiness Limitations (AL), of MRB–1928, Revision 9; with the thresholds and intervals stated in these documents. The initial compliance times for the tasks are at the later of the times specified in paragraphs (g)(1)(i) and (ii) of this AD.

(i) Within the applicable times specified in MRB–1928, Revision 9; EMBRAER MRB—Temporary Revision 9–1, dated October 27, 2015, to Part 2—Airworthiness Limitation Inspections—Structures, and Part 4—Life Limited Items, of Appendix A—Airworthiness Limitations (AL), of MRB–1928, Revision 9; and EMBRAER MRB—Temporary Revision 9–3, dated October 27, 2015, to Part 2—Airworthiness Limitation Inspections—Structures, of Appendix A—Airworthiness Limitations (AL), of MRB–1928, Revision 9. Where tasks are listed in both MRB–1928, Revision 9, and a temporary revision, the compliance times in the temporary revision take precedence.

(ii) Within 90 days or 600 flight cycles after October 11, 2017 (the effective date of AD 2017–16–08), whichever occurs later.

(2) For Model ERJ 190–100 ECJ airplanes: Within 90 days after October 11, 2017 (the effective date of AD 2017–16–08), revise the maintenance or inspection program, as applicable, to incorporate the tasks specified in Part 1—Certification Maintenance Requirements, Part 2—Airworthiness Limitation Inspections—Structures, Part 3—Fuel System Limitation Items, and Part 4—Life Limited Items, of Appendix A—

Airworthiness Limitations (AL), of the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 4, dated July 14, 2014; EMBRAER MPG—Temporary Revision 4–2, dated February 13, 2015; and EMBRAER MPG—Temporary Revision 4–3, dated October 30, 2015; with the thresholds and intervals stated in these documents. The initial compliance times for the tasks are at the later of the times specified in paragraphs (g)(2)(i) and (ii) of this AD.

(i) Within the applicable times specified in Part 1, Certification Maintenance Requirements, Part 2, Airworthiness Limitation Inspections—Structures, Part 3, Fuel System Limitation Items, and Part 4, Life Limited Items, of Appendix A—Airworthiness Limitations (AL), of the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 4, dated July 14, 2014; EMBRAER MPG—Temporary Revision 4–2, dated February 13, 2015; and EMBRAER MPG—Temporary Revision 4–3, dated October 30, 2015. Where tasks are listed in both MPG–2928, Revision 4, and a temporary revision, the compliance times in the temporary revision take precedence.

(ii) Within 90 days or 600 flight cycles after October 11, 2017 (the effective date AD 2017–16–08), whichever occurs later.

(h) Retained No Alternative Actions Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the action required by paragraph (j) of AD 2017–16–08, with a new exception. Except as required by paragraph (i) of this AD, after accomplishment of the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Requirement of This AD: Maintenance or Inspection Program Revision

(1) For Model ERJ 190–100 STD, ERJ 190–100 LR, ERJ 190–100 IGW, ERJ 190–200 STD, ERJ 190–200 LR, and ERJ 190–200 IGW airplanes: Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Appendix A—Airworthiness Limitations (AL), to the EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 12, dated September 27, 2018 (''EMBRAER 190/195 MRB–1928, Revision 12''). The initial compliance time for doing the tasks are at the later of the times specified in paragraphs (i)(1)(i) and (ii) of this AD. Accomplishing the revision required by this paragraph terminates the requirements of paragraph (g)(1) of this AD.

(i) Within the applicable times specified in EMBRAER 190/195 MRB–1928, Revision 12. For the purposes of this AD, the initial compliance times (identified as ''Threshold'' or ''T'' in EMBRAER 190/195 MRB–1928, Revision 12) are expressed in ''total flight cycles or ''total flight hours'' as applicable.

(ii) Within 90 days or 600 flight cycles after the effective date of this AD, whichever occurs later.

(2) For Model ERJ 190–100 ECJ airplanes: Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the tasks specified in Appendix A—Airworthiness Limitations (AL), of the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 8, dated October 10, 2018 (''EMBRAER Lineage 1000/1000E MPG–2928, Revision 8''). The initial compliance times for the tasks are at the later of the times specified in paragraphs (i)(2)(i) and (ii) of this AD. Accomplishing the revision required by this paragraph terminates the requirements of paragraph (g)(2) of this AD.

(i) Within the applicable times specified in EMBRAER Lineage 1000/1000E MPG–2928, Revision 8. For the purposes of this AD, the initial compliance times (identified as ''Threshold'' or ''T'' in EMBRAER Lineage 1000/1000E MPG–2928, Revision 8) are expressed in ''total flight cycles'' or ''total flight hours'' as applicable.

(ii) Within 90 days or 600 flight cycles after the effective date of this AD, whichever occurs later.

(j) No Alternative Actions, Intervals, or CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to *9-ANM-116-AMOC-REQUESTS@faa.gov*.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) FAA AMOC letter AIR–676–18–241, dated May 14, 2018, approved previously for AD 2017–16–08, is approved as an AMOC for the corresponding provisions of this AD.

(iii) Brazilian AMOC No. 632/2019/GCPR/GGCP/SAR–ANAC, dated June 13, 2019, is approved as an AMOC for the corresponding provisions of this AD, provided the task was performed within 5,000 flight cycles since its last accomplishment.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2019–05–02, effective May 2, 2019; corrected July 1, 2019; for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0519.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on February 3, 2020.

(i) Appendix A—Airworthiness Limitations (AL); to the EMBRAER 190/195 Maintenance Review Board Report, MRB–1928, Revision 12, dated September 27, 2018.

(ii) Appendix A—Airworthiness Limitations (AL), to the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 8, dated October 10, 2018.

(4) The following service information was approved for IBR on October 11, 2017 (82 FR 42021, September 6, 2017).

(i) Appendix A—Airworthiness Limitations (AL), of the EMBRAER ERJ 190/195 Maintenance Review Board Report, MRB–1928, Revision 9, dated August 14, 2015.

(ii) Appendix A—Airworthiness Limitations (AL), of the EMBRAER Lineage 1000/1000E Maintenance Planning Guide, MPG–2928, Revision 4, dated July 14, 2014.

(iii) EMBRAER MPG—Temporary Revision 4–2, dated February 13, 2015.

(iv) EMBRAER MPG—Temporary Revision 4–3, dated October 30, 2015.

(v) EMBRAER MRB—Temporary Revision 9–1, dated October 27, 2015.

(vi) EMBRAER MRB—Temporary Revision 9–3, dated October 27, 2015.

(5) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br*; internet *https://www.flyembraer.com*.

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on December 9, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28068 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0487; Product Identifier 2019–NM–044–AD; Amendment 39–19810; AD 2019–23–16]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report of a fuel leak resulting from a crack on the left in-spar upper wing skin. This AD requires repetitive surface high frequency eddy current (HFEC) inspections of the left and right upper wing skin for any crack, repetitive general visual inspections of the upper wing skin in the adjacent rib bay areas for any crack, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0487.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0487; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on July 8, 2019 (84 FR 32343). The NPRM was prompted by a report of a fuel leak resulting from a crack on the left in-spar upper wing skin. The NPRM proposed to require repetitive HFEC inspections of the left and right upper wing skin for any crack, repetitive general visual inspections of the upper wing skin in the adjacent rib bay areas for any crack, and applicable on-condition actions.

The FAA is issuing this AD to address cracks in the upper wing skin, which could grow undetected. This condition, if not addressed, could result in the inability of the structure to carry limit load and adversely affect the structural integrity of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing concurred with the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the proposed AD.

The FAA concurs with the commenter. The FAA has redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Allow Later Revisions to the Service Information

John Straiton requested that the FAA revise the proposed AD to allow the use of later revisions to the service information. The commenter pointed out that allowing the use of later revisions would make it easier for the operator to ensure compliance and that all maintenance is certified to the latest maintenance data. The commenter also mentioned that allowing the use of later revisions would make it unnecessary for operators to wait for new ADs that include the latest revisions to the service information, or for operators to request an AMOC that allows the use of the latest revisions to the service information. The commenter stated that this would reduce the delay in implementation of the latest revisions to the service information and also reduce the maintenance costs associated with the issuance of AMOCs. The commenter also pointed out that the European Union Aviation Safety Agency (EASA) incorporates similar language in its ADs.

The FAA disagrees with the request to allow later revisions to the service information. The FAA may not refer to any document that does not yet exist in an AD. In general terms, the FAA is required by Office of the Federal Register (OFR) regulations for approval of materials incorporated by reference, as specified in 1 CFR 51.1(f), to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as referenced material, in which case the FAA may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for incorporation by reference. See 1 CFR part 51.

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either the FAA must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (j) of this AD.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019. This service information describes procedures for repetitive surface HFEC inspections of the left and right upper wing skin at wing buttock line 157, between stringer 4 and stringer 5 for any crack; repetitive general visual inspections of the upper wing skin in the adjacent rib bay areas for any crack; and applicable on-condition actions. On-condition actions include repair.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 160 airplanes of U.S. registry. The agency estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC Inspection and General Visual Inspection.	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle.	$13,600 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repair specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 February 10, 2020 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–23–16 The Boeing Company: Amendment 39–19810; Docket No. FAA–2019–0487; Product Identifier 2019–NM–044–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a fuel leak resulting from a crack on the left in-spar

upper wing skin. The FAA is issuing this AD to address cracks in the upper wing skin, which could grow undetected. This condition, if not addressed, could result in the inability of the structure to carry limit load and adversely affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019: Within 120 days after the effective date of this AD, do a surface high frequency eddy current (HFEC) inspection of the left and right upper wing skin and a general visual inspection of the upper wing skin in the adjacent rib bay areas for any crack, and do applicable on-condition actions, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Groups 2 and 3 Airplanes

Except as specified by paragraph (i) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1344, dated February 18, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019.

(i) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–57A1344 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any inspection, repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the inspection, repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 737–57A1344 RB, dated February 18, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on December 5, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28066 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0252; Product Identifier 2019–NM–048–AD; Amendment 39–21007; AD 2019–24–18]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727 airplanes, Model 757 airplanes, and Model 767–200, –300, –300F, and –400ER series airplanes. This AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. This AD requires a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 3, 2020.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0252.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for

and locating Docket No. FAA–2019–0252; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 727 airplanes, Model 757 airplanes, and Model 767–200, –300, –300F, and –400ER series airplanes. The NPRM published in the **Federal Register** on July 9, 2019 (84 FR 32667). The NPRM was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. The NPRM was also prompted by an investigation of those reports that revealed that the AOA sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. The NPRM proposed to require a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors.

The FAA is issuing this AD to address ice build-up in the AOA sensor faceplate and vane, which may immobilize the AOA sensor vanes, and could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

Changes Since the NPRM Was Issued

The FAA has reviewed Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019 (the FAA referred to Boeing Alert Service Bulletin 727–34A0247, dated January 2, 2019, as an appropriate source of service information for accomplishing the actions specified in the NPRM) and have revised this AD to refer to Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019. This service information adds airplanes to the effectivity, but specifies that no additional work is needed if the actions in Boeing Alert Service Bulletin 727–34A0247, dated January 2, 2019, have been accomplished. The FAA has added paragraph (i) to this AD to provide credit for actions done prior to the effective date of this AD using Boeing Alert Service Bulletin 727–34A0247, dated January 2, 2019. Subsequent paragraphs have been redesignated accordingly.

Although Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, adds airplanes to the effectivity, the FAA has not added those airplanes to the applicability of this AD. In paragraph (c) of this AD, the FAA refers to the airplanes identified in Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019, except for the additional airplanes (variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410). Adding airplanes to the applicability of this AD would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the comment period, considering additional comments subsequently received, and eventually issuing a final rule. In consideration of the urgency of the unsafe condition identified in this final rule, the FAA has determined that delay of this final rule is not appropriate. However, the FAA might consider further rulemaking on this issue to address the additional airplanes.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing (APB) stated that they have reviewed the NPRM and have determined that the installation of winglets per Supplemental Type Certificate (STC) ST01518SE (for Model 757 airplanes) and STC ST01920SE (for Model 767 airplanes) do not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST01518SE and STC ST01920SE do not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST01518SE or STC ST01920SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

Request To Reduce Compliance Time

The Air Line Pilots Association, International (ALPA) requested the compliance time in the proposed AD be shortened from within 36 months after the effective date of this AD to within 24 months after the effective date of this AD for all airplanes. The ALPA stated that it agrees with the intent of the proposed AD, but does not agree that a 36-month compliance time is sufficient when considering the publication dates of the service information, the low estimated time to complete the repairs, and the high risk associated with inaccurate AOA readings and nuisance stick shaker indications.

The FAA does not agree with the request. The FAA has determined that the compliance time specified in this AD for each airplane model will accommodate the time necessary to accomplish the actions required by this AD and maintain an adequate level of safety. In addition, the commenter did not provide adequate data to justify a shortened compliance time. Lastly, the suggested compliance time change would alter the requirements of this AD to be more restrictive, so additional rulemaking would be required, ultimately delaying issuance of the AD. The FAA finds that delaying this action is inappropriate in light of the identified unsafe condition. However, if additional data are presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue. The FAA has not changed this AD in this regard.

Request To Extend Compliance Time

American Airlines (AAL) and United Airlines (UAL) requested that the FAA extend the compliance time for the Boeing Model 767 fleet from within 36 months or 3,470 flight hours (FH) after the effective date of this AD, whichever occurs first, to match the compliance time of the Boeing Model 757 fleet, which is within 36 months or 9,960 FH after the effective date of this AD, whichever occurs first. AAL reasoned that the Boeing Model 757 and 767 fleets share the same parts for both the AOA sensors and air data computers and operate similar missions with similar cold-soak times on the AOA vanes, and argued that the risk should be the same. AAL asserted that matching the FH compliance times will ensure that accomplishing this proposed AD can be effectively and economically planned, while allowing for the components to be handled the same regardless of fleet. AAL concluded this

method would maintain an equivalent level of safety.

UAL also pointed out that UAL's Boeing Model 757 and 767 fleets are equipped with equivalent AOA sensors and air data computers, and the operation and cold-soak times of the AOA sensors are the same. UAL argued that changing the FH compliance time for Model 767 airplanes to match the FH compliance time for Model 757 airplanes would provide an equivalent level of safety, stating that the AOA sensors of both airplane models are exposed to the same adverse conditions in the air and on the ground.

The FAA does not agree with the request. The FAA has determined that the flight-hour compliance times identified in the service information, without a time threshold, will not ensure that the identified unsafe condition is addressed in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, the FAA finds the compliance times specified in the applicable service information, or within 36 months after the effective date of this AD, whichever occurs first, represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. However, under the provisions of paragraph (j) of this AD, the FAA will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. The FAA has not changed the AD in this regard.

Request To Include Records Review

All Nippon Airways (ANA) requested that the FAA add a statement to the proposed AD that allows a review of the airplane maintenance records for the part number (P/N) of the AOA sensor, if the P/N of the AOA sensor can be conclusively determined from that review. ANA stated that they have installed AOA sensor P/N 0861FL1 (new Boeing P/N S233T913–5) on their Boeing Model 767 fleet because it began accomplishing Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018, since the issue date of the service information. ANA argued that the proposed AD would require them to repeat accomplishment of Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018. ANA stated that it manages the P/N of the AOA sensor within its airplane maintenance records, and the installation of the new AOA sensor P/N 0861FL1 (new Boeing P/N S233T913–5) on each airplane can be traced by reviewing its airplane maintenance records.

The FAA agrees with the commenter's request to add a records review. The FAA has added paragraph (h)(2) to this AD to allow a review of airplane maintenance records in lieu of the inspections for the AOA sensor P/Ns. The FAA also notes that paragraph (f) of this AD states to accomplish the required actions within the compliance times specified, ''unless already done.'' Therefore, if operators have accomplished the actions required for compliance with this AD before the effective date of this AD and have records that show the actions were done as specified in the AD, no further action is necessary.

Request To Reference Later Revisions of Service Information

AAL requested that the applicability, required actions, and exceptions to service information in the proposed AD be revised to include any future FAA approved revisions of service information. AAL requested that the FAA add the phrase ''or later FAA approved revisions'' to Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; and Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018. AAL suggested that any requirement that references service information would state, for example, ''Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019, or later FAA approved revisions.'' AAL argued that allowing later FAA approved revisions of service information would avoid extra work and delays in implementation required for an alternative method of compliance (AMOC) approval should either service information require a revision due to an error or omission of data.

The FAA does not agree with the request. The FAA may not refer to any document that does not yet exist. In general terms, the FAA is required by Office of the Federal Register (OFR) regulations for approval of materials incorporated by reference, as specified in 1 CFR 51.1(f), to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as referenced material, in which case the FAA may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for incorporation by reference. See 1 CFR part 51.

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either the FAA must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an AMOC with this AD under the provisions of paragraph (j) of this AD.

Request To Clarify the Impact of Case Heaters on Unsafe Condition

The commenter, Alan Peterson, FedEx, stated that the proposed AD does not address the possibility that the case heaters within the AOA sensor may be contributing to the unsafe condition, noting specifically that the proposed AD does not address the case heaters within the AOA sensors for Captain and First officer positions on FedEx's large fleet of Boeing Model 757 and 767 airplanes. The commenter pointed out that the case heaters keep the dampening fluid inside the body of the AOA sensor from getting cold-soaked in flight and on the ground. The commenter explained that the wiring of the case heater is in parallel with the AOA vane heater, so in a scenario where the case heater fails, the AOA sensor vane would continue working, but the AOA sensor would become slow to move once it becomes cold-soaked due to the lack of heat from the case heater within the AOA sensor. The commenter described this as a critical oversight in the proposed AD because both the case heater and the AOA vane heater must work correctly for the AOA vanes to function properly.

The commenter stated that, in his experience, an operator may check the resistance of the case heater wiring on both AOA sensor vanes to verify that it is within the tolerance specified by the component maintenance manual (CMM) and verify the wiring is not burnt due to an open circuit. The commenter stated that this check was accomplished on the Boeing Model 757 and 767 fleet, and, if a discrepancy was discovered during the resistance check or revealed evidence of an open circuit in the case heater, the AOA vane would then be replaced. The commenter noted that a malfunction with the case heater would not be registered by the engine-indicating and crew-alerting system (EICAS) because the system only monitors the AOA vane heaters, and suggested that a malfunctioning case heater could affect reactive windshear, reduced vertical separation minimum (RVSM), and stall warning. The FAA infers that the commenter is requesting that the FAA clarify the impact of case heaters within the AOA sensors on the unsafe condition.

The FAA agrees to clarify. One of the specific mitigating design changes in this AD is the position of the case heater. Although the case heaters in the AOA vane assembly are not specifically mentioned in the preamble of the proposed AD, the new AOA sensors with supplier P/N 0861FL1 (new Boeing P/N S233T913–5) have a repositioned case heater specifically designed to mitigate the unsafe condition of moisture build-up and freezing. AOA sensors with supplier P/N 2566A–21 (new Boeing P/N 10–60878–3), 2566A–30 (new Boeing P/N 10–60878–4), and 0861FL (new Boeing P/N S233T913–4), mitigate the unsafe condition using an improved vane design. The FAA has not changed the AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; and Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018. The service information describes procedures for a general visual inspection of the AOA sensors for certain AOA sensors, and replacement of affected AOA sensors. These documents are distinct since they apply to different airplane models.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,287 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$109,395.
Replacement	Up to 3 work-hours × $85 per hour = Up to $255	Up to $54,000	Up to $54,255	Up to $69,826,185.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–24–18 The Boeing Company: Amendment 39–21007; Docket No. FAA–2019–0252; Product Identifier 2019–NM–048–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, as identified in Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; except for airplanes having variable numbers QB065, QD191, QD192, QD402, QD403, QD407, and QD410.

(2) Model 757–200, –200PF, –200CB, and –300 series airplanes, as identified in Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019.

(3) Model 767–200, –300, –300F, and –400ER series airplanes, as identified in Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of nuisance stick shaker activation while the airplane accelerated to cruise speed at the top of climb. This AD was also prompted by an investigation of those reports that revealed that the angle of attack (AOA) (also known as angle of airflow) sensor vanes could not prevent the build-up of ice, causing the AOA sensor vanes to become immobilized, which resulted in nuisance stick shaker activation. The FAA is issuing this AD to address ice build-up in the AOA sensor faceplate and vane, which may immobilize the AOA sensor vanes, and could result in inaccurate or unreliable AOA sensor data being transmitted to airplane systems and consequent loss of controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified in paragraph (h) of this AD: Within 36 months after the effective date of this AD or at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; or Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018; as applicable, whichever occurs first, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; or Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018; as applicable. All replacements of the affected AOA sensors must be done before further flight.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; or Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018; as applicable, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; or Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018; specify to accomplish a general visual inspection of the AOA sensors and to replace affected AOA sensors, a review of the airplane maintenance records is acceptable in lieu of those actions if the part number of the installed AOA sensors can be conclusively determined during that review to have a new or serviceable AOA sensor part number identified in Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019; Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019; or Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018; as applicable.

(i) Credit for Previous Actions

This paragraph provides credit for actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 727–34A0247, dated January 2, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5351; fax: 562–627–5210; email: *Jeffrey.W.Palmer@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 727–34A0247, Revision 1, dated October 1, 2019.

(ii) Boeing Alert Service Bulletin 757–34A0611, Revision 1, dated March 22, 2019.

(iii) Boeing Alert Service Bulletin 767–34A0828, dated December 6, 2018.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on December 9, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27887 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0674; Product Identifier 2019–NM–079–AD; Amendment 39–21003; AD 2019–24–14]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain 328 Support Services GmbH Model 328–100 airplanes. This AD was prompted by a report of missing rivets on landing flap support arm 2. This AD requires an inspection of the landing flap support arms for missing rivets and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 1000; email: *ADs@easa.europa.eu*; internet: *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0674.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0674; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0096, dated April 30, 2019 (''EASA AD 2019–0096'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain 328 Support Services GmbH Model 328–100 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain 328 Support Services GmbH Model 328–100 airplanes. The NPRM published in the **Federal Register** on September 9, 2019 (84 FR 47173). The NPRM was prompted by a report of missing rivets on landing flap support arm 2. The NPRM proposed to require an inspection of the landing flap support arms for missing rivets and corrective actions if necessary.

The FAA is issuing this AD to address missing rivets, which could lead to the loss of one of two load paths, reducing the fatigue life of the affected flap arms and leading to fatigue cracking of the support arms of the flaps, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The agency received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0096 describes procedures for an inspection of the landing flap support arms for missing rivets, which includes a special detailed inspection (eddy current) of the landing flap support 2 arm along the edges and around the rivets for cracks, and corrective actions. Corrective actions include installing rivets and repairing cracks. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 22 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × $85 per hour = $510	$0	$510	$11,220

The FAA estimates the following costs to do any necessary on-condition installation that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition installation:

ESTIMATED COSTS OF ON-CONDITION INSTALLATION

Labor cost	Parts cost	Cost per product
4 work-hours × $85 per hour = $340	$27	$367

The FAA has received no definitive data that would enable the FAA to provide cost estimates for the on-condition crack repairs specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–24–14 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–21003; Docket No. FAA–2019–0674; Product Identifier 2019–NM–079–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to 328 Support Services GmbH Model 328–100 airplanes, certificated in any category, serial numbers 3032 through 3063 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report of missing rivets on landing flap support arm 2. The FAA is issuing this AD to address missing rivets, which could lead to the loss of one of two load paths, reducing the fatigue life of the affected flap arms and leading to fatigue cracking of the support arms of the flaps, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0096, dated April 30, 2019 (''EASA AD 2019–0096'').

(h) Exceptions to EASA AD 2019–0096

(1) Where EASA AD 2019–0096 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0096 does not apply to this AD.

(i) Corrective Action for Cracking

If any crack is found during any inspection required by paragraph (2) of EASA AD 2019–0096: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or 328 Support Services GmbH's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0096 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or 328 Support Services GmbH's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

For more information about this AD, contact Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3228.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0096, dated April 30, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0096, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 6017; email: *ADs@easa.europa.eu*;

internet: *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0674.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on December 9, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28067 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0675; Product Identifier 2019–NM–068–AD; Amendment 39–19815; AD 2019–24–12]

RIN 2120–AA64

Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. This AD was prompted by a report that certain fuselages were delivered with nonconforming keel tension fittings and stringer end fittings. This AD requires a detailed visual inspection of stringer end fittings and keel fittings for loose or working fasteners, signs of wear, and corrosion, and repair if necessary; and a general visual inspection of the keel tension fitting and stringer end fittings, as applicable, and repairs and replacement of the keel and stringer end fittings if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 3, 2020.

ADDRESSES: For Bombardier, Inc., or De Havilland Aircraft of Canada Limited service information identified in this final rule, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416–375–4000; fax: 416–375–4539; email: *thd@dehavilland.com;* internet: *https://dehavilland.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0675.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0675; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7330; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–06, dated February 18, 2019 (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–401 and –402 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0675.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model DHC–8–401 and –402 airplanes. The NPRM published in the **Federal Register** on September 9, 2019 (84 FR 47170). The NPRM was prompted by a report that certain fuselages were delivered with non-conforming keel tension fittings and stringer end fittings. The NPRM proposed to require a detailed visual inspection of stringer end fittings and keel fittings for loose or working fasteners, signs of wear, and corrosion, and repair if necessary; and a general visual inspection of the keel tension fitting and stringer end fittings, as applicable, and repairs and replacement of the keel and stringer end fittings if necessary. The FAA is issuing this AD to address non-conforming keel tension fittings and stringer end fittings, which could lead to premature cracking and corrosion in several locations and compromise the structural integrity of the fuselage joints. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update the Design Approval Holder (DAH) for the Affected Airplanes

Horizon Air requested that the FAA update the DAH for the affected airplanes. Horizon Air pointed out that De Havilland Aircraft of Canada Limited is now the DAH for the Model DHC–8–401 and –402 airplanes.

The FAA agrees with the commenter for the reasons provided and has updated this final rule accordingly.

Request To Include Revised Service Information and Credit for Previous Revision

Horizon Air requested that the FAA update the final rule to include revised service information. Horizon Air mentioned that De Havilland Aircraft of Canada Limited has issued Service Bulletin 84–53–75, Revision A, dated August 2, 2019. Horizon Air also requested that the FAA give credit for accomplishment of the required actions prior to the effective date of this AD using Bombardier Service Bulletin 84–53–75, dated August 29, 2018.

The FAA agrees with the commenter for the reasons provided and has updated this final rule to refer to De Havilland Aircraft of Canada Limited Service Bulletin 84–53–75, Revision A, dated August 2, 2019. The FAA has determined that no additional work is

required for airplanes on which the actions specified in Bombardier Service Bulletin 84–53–75, dated August 29, 2018, have already been done. The FAA has added paragraph (k) to this AD to provide credit for accomplishment of the required actions prior to the effective date of this AD using Bombardier Service Bulletin 84–53–75, dated August 29, 2018.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

De Havilland Aircraft of Canada Limited has issued the following service information.

• Bombardier Service Bulletin 84–53–74, dated August 29, 2018. This service information describes procedures for a general visual inspection of the keel and stringer end fittings, repair, and replacement of the keel and stringer end fittings.

• Service Bulletin 84–53–75, Revision A, dated August 2, 2019. This service information describes procedures for a detailed visual inspection of stringer end fittings and keel fittings, in the passenger compartment at stations X373.15 and X428.50, for loose or working fasteners, signs of wear, and corrosion.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1 airplane of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
33 work-hours × $85 per hour = $2,805	$0	$2,805	$2,805

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition replacements specified in this AD.

ESTIMATED COSTS OF ON-CONDITION REPLACEMENTS

Labor cost	Parts cost	Cost per product
46 work-hours × $85 per hour = $3,910	$54,649	$58,559

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–24–12 De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–19815; Docket No. FAA–2019–0675; Product Identifier 2019–NM–068–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Model DHC–8–401 and –402 airplanes, certificated in any category, serial numbers 4327, 4330, 4337, 4342, 4350, 4352, 4362, 4367, 4372, 4375, 4376, 4378, 4383, 4384, 4385, 4388, 4391, 4392, 4396, and 4397.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that certain fuselages were delivered with non-conforming keel tension fittings and stringer end fittings. The FAA is issuing this AD to address non-conforming keel tension fittings and stringer end fittings which could lead to premature cracking and corrosion in several locations and compromise the structural integrity of the fuselage joints.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Detailed Visual Inspection of the Stringer End Fittings and Keel Fittings and Repair

Within 8,000 flight hours or 5 years after the effective date of this AD, whichever occurs first: Do a detailed visual inspection of the stringer end fittings and keel fittings at fuselage stations X373.15 and X428.50 for loose and working fasteners, signs of wear, and corrosion in accordance with paragraph 3.B. of the Accomplishment Instructions of De Havilland Aircraft of Canada Limited Service Bulletin 84–53–75, Revision A, dated August 2, 2019. If any loose or working fasteners, signs of wear, or corrosion are found during any inspection required by this paragraph, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or De Havilland Aircraft of Canada Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature. Doing the actions specified in Bombardier Service Bulletin 84–53–66 does not constitute compliance with the actions specified in this paragraph.

(h) General Visual Inspection, Repair, and Replacement of the Stringer End Fittings and Keel Fittings

Except for airplanes identified in paragraph (i) of this AD: Before accumulating 40,000 total flight cycles or within 12 months after the effective date of this AD, whichever occurs later, do the inspections specified in paragraphs (h)(1) and (2) of this AD.

(1) Do a general visual inspection of the keel tension fittings at fuselage stations X373.15 and X428.50 for non-conformance conditions (oversize, elongated, and off angle conditions) in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018. If any non-conformance condition is found, before further flight, replace the keel tension fittings at fuselage stations X373.15 and X428.50, including doing all applicable repairs, in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018; except where Bombardier Service Bulletin 84–53–74, dated August 29, 2018, specifies to contact Bombardier, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(2) Do a general visual inspection of the stringer end fittings at fuselage stations X373.15 and X428.50 for non-conformance conditions (*i.e.,* excessive depth Hi-Lite fastener hole chamfers and installation too close to the fillet radius), in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018. If any non-conformance condition is found, before further flight, replace the stringer end fittings at fuselage stations X373.15 and X428.50, including doing all applicable repairs and an eddy current or fluorescent dye penetrant inspection for cracks of all blended areas and fasteners, in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018; except where Bombardier Service Bulletin 84–53–74, dated August 29, 2018, specifies to contact Bombardier, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Rework for Airplanes That Have Accomplished Bombardier Service Bulletin 84–53–69 Prior to the Effective Date of This AD

For airplanes on which the actions specified in Bombardier Service Bulletin 84–53–69 have been accomplished prior to the effective date of this AD: Before accumulating 40,000 total flight cycles or within 12 months after the effective date of this AD, whichever occurs later, do a general visual inspection of the stringer end fittings at fuselage stations X373.15 and X428.50 for non-conformance conditions (*i.e.,* excessive depth Hi-Lite fastener hole chamfers and installation too close to the fillet radius) in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018. If any non-conformance condition is found, before further flight, replace the stringer end fittings at fuselage stations X373.15 and X428.50, including doing all applicable repairs and an eddy current or fluorescent dye penetrant inspection for cracks of all blended areas and fasteners, in accordance with paragraph 3.B. of the Accomplishment Instructions of Bombardier Service Bulletin 84–53–74, dated August 29, 2018; except where Bombardier Service Bulletin 84–53–74, dated August 29, 2018, specifies to contact Bombardier, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Corrective Action for Eddy Current and Fluorescent Dye Penetrant Inspections

If, during any eddy current or fluorescent dye penetrant inspection required by paragraph (h)(2) or (i) of this AD, any cracking is found, before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–53–75, dated August 29, 2018.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or De Havilland Aircraft of Canada Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–06, dated February 18, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0675.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7330; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (n)(3) and (4) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 84–53–74, dated August 29, 2018.

(ii) De Havilland Aircraft of Canada Limited Service Bulletin 84–53–75, Revision A, dated August 2, 2019.

(3) For Bombardier, Inc., or De Havilland Aircraft of Canada Limited service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416–375–4000; fax: 416–375–4539; email: *thd@dehavilland.com;* internet: *https://dehavilland.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on November 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28072 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0481; Product Identifier 2019–NM–058–AD; Amendment 39–21002; AD 2019–24–13]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318 series airplanes, Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report that during a maintenance check, cracks were found in a stiffener of a certain lateral window frame. This AD requires repetitive high frequency eddy current (HFEC) inspections for cracking of a stiffener of a certain lateral window frame, and applicable related investigative and corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 3, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 3, 2020.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0481.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0481; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0067R1, dated September 11, 2019 (''EASA AD 2019–0067R1'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes, Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not on the U.S. Register; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318 series airplanes, Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on June 24, 2019 (84 FR 29426). The NPRM was prompted by a report that during a maintenance check, cracks were found in a stiffener of a certain lateral window frame. The NPRM proposed to require repetitive HFEC inspections for cracking of a stiffener of a certain lateral window frame, and applicable related investigative and corrective actions.

The FAA is issuing this AD to address cracking of the horizontal upper

stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise the Applicability

Emirates Airlines (EAD) requested that the FAA exclude Model A319–115 VIP airplanes from the applicability. EAD commented that the proposed inspection requirements are related to airworthiness limitations (ALI) task 531105–02–1 and ALI task 531105–01–1. EAD also commented that these ALI tasks are not applicable to Model A319–115 VIP airplanes, and after reporting this to EASA, EASA confirmed that this is correct. EAD stated that the EASA AD has been revised to remove Model A319–115 VIP airplanes from the applicability.

The FAA agrees with the commenter's request. This AD now references EASA AD 2019–0067R1. The applicability in paragraph (c) of this AD is now limited to the airplanes identified in AD 2019–0067R1, which excludes certain Model A318 and A319 airplanes, including those identified by EAD. It has been determined that certain Model A318 and A319 airplane configurations could be removed from the applicability of this AD as the compliance time for the initial inspection is beyond the maintenance program publication trigger for those configurations.

Request To Clarify the Applicability

Delta Airlines (DAL) asked whether all manufacturer serial numbers are affected regardless of the applicability specified in EASA AD 2019–0067. DAL stated that in ''Required Action(s) and Compliance Time(s)'' of EASA AD 2019–0067, operators are instructed to accomplish a special detailed inspection of each affected part ''in accordance with'' the instructions of the applicable service information. DAL commented that the referenced service information is missing several airplane manufacturer serial numbers.

The FAA agrees to clarify. If there is a discrepancy between the applicability of this AD and the effectivity of the service information, then this AD takes precedence. As noted previously, the applicability of this AD is now limited to the airplanes identified in EASA AD 2019–0067R1. This AD has not been revised regarding this issue.

First Request To Revise the Compliance Time for Reporting

American Airlines (AAL) and United Airlines (UAL) requested that the compliance time for reporting be revised to match that of EASA AD 2019–0067, which is 90 days instead of 30 days as specified in the proposed AD. AAL stated that the requirement to submit inspection results within 30 days would put an undue burden on its operations.

The FAA agrees with the commenters' request. The FAA's standard compliance time for an AD reporting requirement is 30 days; however, the FAA has determined that 90 days is acceptable for this AD. Therefore, the compliance times in paragraphs (h)(3)(i) and (ii) of this AD have been revised to 90 days, which matches the compliance time for reporting in EASA AD 2019–0067R1.

Second Request To Revise the Compliance Time for Reporting

DAL requested that the NPRM allow up to 30 days following the return-to-service date of the visit instead of 30 days from the finding to comply with the reporting requirement. DAL stated that while the visit is ongoing, all of the paperwork remains with the airplane, so while engineering may be aware of the finding, it may not yet have access to the details of the finding or repair until after the visit is closed and the files are sent to the central repository.

The FAA disagrees with the commenter's request. Each operator has a unique AD management program, which comprises methods for demonstrating compliance with the AD in accordance with the applicable operational regulations; therefore, the FAA cannot prescribe or modify an AD based on an individual operator's unique methods of preparing the airplane for compliance. As noted previously, the compliance time for reporting has been changed from 30 to 90 days in this AD. In addition, operators may request approval of an alternative method of compliance (AMOC) using the procedures in paragraph (i)(1) of this AD to request a different compliance time. This AD has not been revised regarding this issue.

Request Regarding No Findings

DAL requested that inspections with no findings not be required to be reported.

The FAA disagrees with the commenter's request. Reporting all findings from the inspections is necessary to assess the extent of the problem in the affected fleet and to develop any additional corrective action that may be necessary. This AD has not been revised regarding this issue.

Request To Include Methods for Reporting and OMB Control Number

DAL requested that the FAA specifically include a ''Reporting Requirements'' paragraph in the proposed AD and provide the largest number of methods for submitting the report (*e.g.,* email, fax, letter, Airbus Tech Request, service bulletin reporting on the Airbus website). DAL stated that the reporting requirement paragraph should also include the ''AD Manual'' identifying the ''what, how, and when,'' and that the ''OMB 2120–0056 approved'' statement should be included in the regulatory text of the proposed AD, instead of the preamble.

The FAA would like to clarify that the specific reporting requirements are specified in paragraph (h)(3) of this AD and paragraph (7) of EASA AD 2019–0067R1. For clarification, this AD allows the reporting methods that are specified in the service information identified in EASA AD 2019–0067R1, including the methods mentioned by DAL. When reporting is required, the FAA currently includes the OMB Control Number in both the preamble and regulatory text of an AD. OMB Control Number 2120–0056 is included in paragraph (i)(4) of this AD. This AD has not been revised regarding this issue.

Request To Revise Certain Language in the Proposed AD

DAL requested that the language in the proposed AD reflect the corrosion inhibiting compound (CIC) control in the corrosion prevention control program (CPCP) with a statement such as ''Reapplication of CICs may be controlled by the operator's CPCP program instead of this SB'' or ''Reapplication of CICs is not an RC [Required for Compliance] step.'' DAL stated that this proposed language could be added to the ''Requirements'' paragraph, the ''Exceptions to EASA AD 2019–0067'' paragraph, or the ''Other FAA AD Provisions'' paragraph in the proposed AD.

DAL commented that the service information states that all steps in the ''Procedure and Test'' sections are RC. DAL added that some of those procedural steps include re-applying CICs. DAL also stated that the referenced service information is not related to corrosion, and these steps might be part of the modification but should not be RC. DAL commented that since the choice of CICs is under the operators' control within their CPCP program, operators may have to request

approval of an AMOC to use their standard CIC rather than what is specified in the service information. DAL also commented that an operator may have to use an old or out-of-date CIC because it is listed in older service information.

The FAA disagrees with the commenter's request. The EASA and Airbus approved the applicable protective finish as a required step to mitigate the risk addressed in this AD, and the FAA agrees that this step should be required. DAL has not proposed an alternative CIC or justified the need for an alternative CIC to complete the protective finish step. Each operator has its own unique CPCP, which may not contain information relative to mitigating the risk addressed in this AD. Operators may request approval of an AMOC using the procedures in paragraph (i)(1) of this AD for using an alternative CIC. This AD has not been revised regarding this issue.

Request To Work on the Airplane Under Certain Circumstances

DAL requested that the FAA revise the proposed AD to allow work on the airplane while it is on jacks, and to define when the operator can or cannot move it (the jacks). DAL stated that since the accomplishment of the proposed AD must be ''in accordance with'' the service information, ''basic airplane configuration'' will result in accomplishing the inspections while the airplane is not on jacks. DAL also stated that it has many visits requiring the airplane to be jacked and routinely accomplishes multiple tasks simultaneously during service visits. DAL commented that requiring the service information to be accomplished during that portion of the visit with the weight on wheels limits the ability for the operator to perform the work.

The FAA disagrees with the commenter's request. The FAA cannot prescribe or modify an AD based on an individual operator's unique methods of preparing the airplane for compliance. The FAA encourages DAL to work with the FAA certificate management office in establishing methods needed to prepare the airplane for AD-related work using either Airbus service information, or equivalent, in accordance with DAL's maintenance or inspection program. If necessary, operators may request approval of an AMOC using the procedures specified in paragraph (i)(1) of this AD. The AD has not been changed in this regard.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0067R1 describes procedures for repetitive HFEC inspections of the horizontal upper stiffener of the lateral window frame on the right-hand (RH) and left-hand (LH) sides for any cracking, and applicable related investigative and corrective actions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,291 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × $85 per hour = $765	$0	$765	$987,615

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 13 work-hours × $85 per hour = Up to $1,105	$0	Up to $1,105.

* Table does not include estimated costs for reporting and on-condition repairs. The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition repairs specified in this AD.

The FAA estimates that it would take about 1 work-hour per product to comply with the on-condition reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Send comments regarding this burden estimate or any

other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–24–13 Airbus SAS: Amendment 39–21002; Docket No. FAA–2019–0481; Product Identifier 2019–NM–058–AD.

(a) Effective Date

This AD is effective February 3, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0067R1, dated September 11, 2019 (''EASA AD 2019–0067R1'').

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report that during a maintenance check, cracks were found in an upper stiffener of the lateral window frame at the frame 4 upper attachment. The FAA is issuing this AD to address cracking of the horizontal upper stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019–0067R1.

(h) Exceptions to EASA AD 2019–0067R1

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0067R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0067R1 does not apply to this AD.

(3) Paragraph (7) of EASA AD 2019–0067R1 specifies to report certain inspection results to Airbus. For this AD, report those inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0067R1 that contains RC procedures and tests: Except as required by (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a

collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2019–0067R1, dated September 11, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0067R1, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0481.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on December 4, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28069 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0980; Product Identifier 2019–NM–180–AD; Amendment 39–21004; AD 2019–24–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting an airworthiness directive (AD) for certain The Boeing Company Model 737–900ER series airplanes. This AD requires replacement of nonconforming head strike pads with conforming head strike pads. This AD was prompted by a report of nonconforming head strike pads on the left and right mid exit doors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 14, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 14, 2020.

The FAA must receive comments on this AD by February 13, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0980.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0980; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Allie Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3564; email: *allison.buss@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report indicating that nonconforming head strike pads were installed on the left and right mid exit doors in the passenger compartment of certain Boeing Model 737–900ER series airplanes. The nonconforming head strike pads were fabricated using eight bonded layers of ⅛-inch-thick foam, instead of the required 1-inch-thick continuous foam. This condition, if not addressed, could result in injury to passengers in an otherwise survivable emergency landing and potentially block passenger egress.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019. This service information describes procedures for replacement of nonconforming head strike pads with conforming head strike pads on the left and right mid exit doors. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

The FAA is issuing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishment of the actions identified in Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0980.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

FAA's Justification and Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0980 and Product Identifier 2019–NM–180–AD at the beginning of your comments. The FAA specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

The FAA will post all comments, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this final rule.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product
Replacement	1 work-hour × $85 per hour = $85	Up to $7,080	Up to $7,165.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2019–24–15 The Boeing Company: Amendment 39–21004; Docket No. FAA–2019–0980; Product Identifier 2019–NM–180–AD.

(a) Effective Date

This AD is effective January 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–900ER series airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report of nonconforming head strike pads on the mid exit doors. The FAA is issuing this AD to address nonconforming head strike pads which could result in injury to passengers in an otherwise survivable emergency landing and potentially block passenger egress.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–25–1831, dated September 24, 2019, which is referred to in Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019.

(h) Exceptions to Service Information Specifications

Where Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019, uses the phrase ''the original issue date of the Requirements Bulletin 737–25–1831 RB,'' this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Allie Buss, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3564; email: *allison.buss@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Requirements Bulletin 737–25–1831 RB, dated September 24, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on December 9, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–28070 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket Nos. FDA–2017–N–1129 and FDA–2017–N–1610]

Medical Devices; Exemptions From Premarket Notification for Class I and Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) identified a list of class I devices and class II devices that are now exempt from premarket notification requirements, subject to certain limitations. FDA published the lists of final determinations in accordance with procedures established by the 21st Century Cures Act (Cures Act). Although each classification regulation for each such type of device shall be deemed amended to incorporate such exemption, we are publishing this final order to amend the codified language for each listed class I and class II device's classification regulation to reflect the final determinations. FDA's action decreases regulatory burden on the medical device industry and eliminates private costs and expenditures required to comply with certain Federal regulations.

DATES: This order is effective December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Karen Fikes, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5502, Silver Spring, MD 20993, 301–796–9603, email: *karen.fikes@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Cures Act (Pub. L. 114–255) was signed into law on December 13, 2016. Under the Cures Act, section 3054 amended section 510(l) and (m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360(l) and (m)). As amended, section 510(l)(2) of the FD&C Act requires FDA to identify through publication in the **Federal Register**, any type of class I device that the Agency determines no longer requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness.

FDA shall publish this determination within 120 days of the date of enactment of the Cures Act and at least once every 5 years thereafter, as FDA determines appropriate. Further, section 510(l)(2) provides that upon the date of publication of the Agency's determination in the **Federal Register**, a 510(k) will no longer be required for these devices and the classification regulation applicable to each such type of device shall be deemed amended to incorporate such exemption.

As amended, section 510(m)(1)(A) of the FD&C Act provides that, within 90 days after enactment of the Cures Act and at least once every 5 years thereafter, FDA shall publish in the **Federal Register** a notice containing a list of each type of class II device that FDA determines no longer requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. This notice shall provide at least a 60-day comment period. Within 210 days of enactment of the Cures Act, FDA shall publish in the **Federal Register** a list representing its final determination regarding exemption of devices that were contained in the proposed list published under 510(m)(1)(A) of the FD&C Act. Further, section 510(m)(3) of the FD&C Act provides that upon the date of publication of the final list in the **Federal Register**, a 510(k) will no longer be required for these devices and the classification regulation applicable to each such device shall be deemed amended to incorporate such exemption.

In the **Federal Register** of April 13, 2017 (82 FR 17841), in accordance with the amendments to 510(l)(2), FDA issued a notice of final determination to exempt a list of class I devices from premarket notification requirements under section 510(k) of the FD&C Act, subject to certain limitations. In the **Federal Register** of March 14, 2017 (82 FR 13609), in accordance with the amendments to 510(m)(1)(A), FDA issued a notice proposing to exempt a list of class II devices from premarket notification requirements under section 510(k) of the FD&C Act, subject to certain limitations. After a 60-day comment period, in the **Federal Register** of July 11, 2017 (82 FR 31976), FDA issued a notice of final determination to exempt class II devices provided in the proposed list. Through this action, FDA is now amending the codified language for each listed classification regulation to reflect final determinations for these class I and class II exemptions.[1]

Following publication of the notices, FDA determined that it is unnecessary to update three classification regulations (21 CFR 872.4565, 21 CFR 878.4014, and 21 CFR 880.6320) included in the class I notice, 82 FR 17841. Five product codes corresponding to these three classification regulations (EGI and EIB (21 CFR 872.4565), OVR (21 CFR 878.4014), KZF and PEQ (21 CFR 880.6320)) were identified for exemption in 82 FR 17841; however, the corresponding classification regulations were already class I, exempt from premarket notification procedures in subpart E of part 807 (21 CFR part 807, subpart E) subject to the limitations in the corresponding ''.9'' regulations (*i.e.,* 21 CFR 872.9, 21 CFR 878.9 or 21 CFR 880.9); and, therefore, no revisions to the codified are necessary. Additionally, we determined that it is unnecessary to update 21 CFR 876.5820 included in the class II notice, 82 FR 13609. The product code within this classification regulation (FKI) was identified for exemption in 82 FR 13609. However, this device type is specifically identified within the class I paragraph of this classification regulation (21 CFR 876.5820(b)(2)) and already exempt from premarket notification procedures in subpart E of part 807 subject to the limitations in 21 CFR 876.9. Therefore, no revisions to the codified are necessary.

We are also making a revision to correct a misidentified classification regulation in 82 FR 31976. The notice incorrectly listed the classification regulation 21 CFR 868.1400 ''Carbon dioxide gas analyzer'' as corresponding with product code LLK; however, the correct classification regulation associated with product code LLK is 21 CFR 880.5780 ''Medical Support Stocking''. Therefore, 21 CFR 868.1400 remains unchanged, and 21 CFR 880.5780(a)(2) is revised to reflect the exemption.

We are revising the name of one classification regulation, currently entitled ''Urological clamp for males'', in response to FDA's exemption in 82 FR 17841. Part 876.5160 is currently entitled ''Urological clamp for males,'' which was previously exempt from premarket notification procedures ''. . . Except when intended for internal use or use on females . . .''. In 82 FR 17841, we exempted product code MNG, ''External Urethral Occluder, Urinary Incontinence-Control, Female'' and removed the current limitation language regarding ''use on females.'' Therefore, FDA is revising the name of the classification regulation to read ''Urological clamp'' to ensure clarity.

II. Criteria for Exemption

As amended by the Cures Act, section 510(l) now has two provisions, 510(l)(1) and (2). Under 510(1)(1), a class I device is exempt from the premarket notification requirements under section 510(k) of the FD&C Act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Based on these criteria, FDA evaluated all class I devices to determine which device types should be exempt from premarket notification requirements.

For class II devices, there are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the January 21, 1998, **Federal Register** notice (63 FR 3142) and subsequently in the guidance we issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff''.[2]

III. Limitations on Exemptions

Although FDA exempted the types of class I and class II devices from the premarket notification requirements under section 510(k) of the FD&C Act in accordance with the provisions under 510(l) and (m), an exemption from the requirement of premarket notification does not mean the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation. FDA's determination that premarket notification is unnecessary to provide a reasonable assurance of safety and effectiveness is based, in part, on the assurance of safety and effectiveness that other regulatory controls, such as current good manufacturing practice requirements, provide.

In addition to being subject to the general limitations to the exemptions found in 21 CFR 862.9 to 892.9, FDA has also partially limited some exemptions from premarket notification requirements to specific devices within

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

[2] Available at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/procedures-class-ii-device-exemptions-premarket-notification-guidance-industry-and-cdrh-staff.*

the listed device type. In such situations where a partial exemption limitation has been identified, FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for these devices.

IV. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final order refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485; and the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and Containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892 are amended as follow:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. In § 862.1020, revise paragraph (b) to read as follows:

§ 862.1020 Acid phosphatase (total or prostatic) test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 3. In § 862.1090, revise paragraph (b) to read as follows:

§ 862.1090 Angiotensin converting enzyme (A.C.E.) test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 4. In § 862.1100, revise paragraph (b) to read as follows:

§ 862.1100 Aspartate amino transferase (AST/SGOT) test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 5. In § 862.1150, revise paragraph (b) to read as follows:

§ 862.1150 Calibrator.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 6. In § 862.1345, revise paragraph (b) to read as follows:

§ 862.1345 Glucose test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 7. In § 862.1350, revise paragraph (b) introductory text to read as follows:

§ 862.1350 Continuous glucose monitor secondary display.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9. The special controls for this device are:

* * * * *

■ 8. In § 862.1410, revise paragraph (b) to read as follows:

§ 862.1410 Iron (non-heme) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 9. In § 862.1415, revise paragraph (b) to read as follows:

§ 862.1415 Iron-binding capacity test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 10. In § 862.1445, revise paragraph (b) to read as follows:

§ 862.1445 Lactate dehydrogenase isoenzymes test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 11. In § 862.1509, revise paragraph (b) to read as follows:

§ 862.1509 Methylmalonic acid (nonquantitative) test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 12. In § 862.1580, revise paragraph (b) to read as follows:

§ 862.1580 Phosphorous (inorganic) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 13. In § 862.1660, revise paragraph (b) to read as follows:

§ 862.1660 Quality control material (assayed and unassayed).

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for use in donor screening tests, quality control materials (assayed and unassayed) are

exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 14. In § 862.1685, revise paragraph (b) as follows:

§ 862.1685 Thyroxine-binding globulin test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 15. In § 862.1700, revise paragraph (b) as follows:

§ 862.1700 Total thyroxine test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 16. In § 862.1775, revise paragraph (b) to read as follows:

§ 862.1775 Uric acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 17. In § 862.2265, revise paragraph (b) introductory text to read as follows:

§ 862.2265 High throughput genomic sequence analyzer for clinical use.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9. The special controls for this device are:

* * * * *

■ 18. In § 862.2570, revise paragraph (b) to read as follows:

§ 862.2570 Instrumentation for clinical multiplex test systems.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9. The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Instrumentation for Clinical Multiplex Test Systems.'' See § 862.1(d) for the availability of this guidance document.

■ 19. In § 862.3050, revise paragraph (b) to read as follows:

§ 862.3050 Breath-alcohol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 20. In § 862.3100, revise paragraph (b) to read as follows:

§ 862.3100 Amphetamine test system.

* * * * *

(b) *Classification.* Class II (special controls). An amphetamine test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 21. In § 862.3150, revise paragraph (b) to read as follows:

§ 862.3150 Barbiturate test system.

* * * * *

(b) *Classification.* Class II (special controls). A barbiturate test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 22. In § 862.3170, revise paragraph (b) to read as follows:

§ 862.3170 Benzodiazepine test system.

* * * * *

(b) *Classification.* Class II (special controls). A benzodiazepine test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 23. In § 862.3200, revise paragraph (b) to read as follows:

§ 862.3200 Clinical toxicology calibrator.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 24. In § 862.3220, revise paragraph (b) to read as follows:

§ 862.3220 Carbon monoxide test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 25. In § 862.3240, revise paragraph (b) to read as follows:

§ 862.3240 Cholinesterase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 26. In § 862.3250, revise paragraph (b) to read as follows:

§ 862.3250 Cocaine and cocaine metabolite test system.

* * * * *

(b) *Classification.* Class II (special controls). A cocaine and cocaine metabolite test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,*

programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 27. In § 862.3270, revise paragraph (b) to read as follows:

§ 862.3270 Codeine test system.

* * * * *

(b) *Classification.* Class II (special controls). A codeine test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 28. In § 862.3280, revise paragraph (b) to read as follows:

§ 862.3280 Clinical toxicology control material.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9.

■ 29. In § 862.3580, revise paragraph (b) to read as follows:

§ 862.3580 Lysergic acid diethylamide (LSD) test system.

* * * * *

(b) *Classification.* Class II (special controls). A lysergic acid diethylamide (LSD) test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 30. In § 862.3610, revise paragraph (b) to read as follows:

§ 862.3610 Methamphetamine test system.

* * * * *

(b) *Classification.* Class II (special controls). A methamphetamine test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 31. In § 862.3620, revise paragraph (b) to read as follows:

§ 862.3620 Methadone test system.

* * * * *

(b) *Classification.* Class II (special controls). A methadone test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 32. In § 862.3630, revise paragraph (b) to read as follows:

§ 862.3630 Methaqualone test system.

* * * * *

(b) *Classification.* Class II (special controls). A methaqualone test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 33. In § 862.3640, revise paragraph (b) to read as follows:

§ 862.3640 Morphine test system.

* * * * *

(b) *Classification.* Class II (special controls). A morphine test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 34. In § 862.3650, revise paragraph (b) to read as follows:

§ 862.3650 Opiate test system.

* * * * *

(b) *Classification.* Class II (special controls). An opiate test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 35. In § 862.3700, revise paragraph (b) to read as follows:

§ 862.3700 Propoxyphene test system.

* * * * *

(b) *Classification.* Class II (special controls). A propoxyphene test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 36. In § 862.3870, revise paragraph (b) to read as follows:

§ 862.3870 Cannabinoid test system.

* * * * *

(b) *Classification.* Class II (special controls). A cannabinoid test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

■ 37. In § 862.3910, revise paragraph (b) to read as follows:

§ 862.3910 Tricyclic antidepressant drugs test system.

* * * * *

(b) *Classification.* Class II (special controls). A tricyclic antidepressant drugs test system is not exempt if it is intended for any use other than employment or insurance testing or is intended for Federal drug testing programs. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 862.9, provided the test system is intended for employment and insurance testing and includes a statement in the labeling that the device is intended solely for use in employment and insurance testing, and does not include devices intended for Federal drug testing programs (*e.g.,* programs run by the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Transportation (DOT), and the U.S. military).

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 38. The authority citation for part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 39. In § 864.5400, revise paragraph (b) to read as follows:

§ 864.5400 Coagulation instrument.

* * * * *

(b) *Classification.* Class II (special controls). A fibrometer or coagulation timer intended for use with a coagulation instrument is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 40. In § 864.5425, revise paragraph (b) to read as follows:

§ 864.5425 Multipurpose system for in vitro coagulation studies.

* * * * *

(b) *Classification.* Class II (special controls). A control intended for use with a multipurpose system for in vitro coagulation studies is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 41. In § 864.6550, revise paragraph (b) to read as follows:

§ 864.6550 Occult blood test.

* * * * *

(b) *Classification.* Class II (special controls). A control intended for use with an occult blood test is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 42. In § 864.7040, revise paragraph (b) to read as follows:

§ 864.7040 Adenosine triphosphate release assay.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 43. In § 864.7275, revise paragraph (b) to read as follows:

§ 864.7275 Euglobulin lysis time tests.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 44. In § 864.7300, revise paragraph (b) to read as follows:

§ 864.7300 Fibrin monomer paracoagulation test.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9. The special control for this device is FDA's ''In Vitro Diagnostic Fibrin Monomer Paracoagulation Test.'' See § 864.1(d) for information on obtaining this document.

■ 45. In § 864.7340, revise paragraph (b) to read as follows:

§ 864.7340 Fibrinogen determination system.

* * * * *

(b) *Classification.* Class II (special controls). A control or fibrinogen standard intended for use with a fibrinogen determination system is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 46. In § 864.7375, revise paragraph (b) to read as follows:

§ 864.7375 Glutathione reductase assay.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 47. In § 864.7415, revise paragraph (b) to read as follows:

§ 864.7415 Abnormal hemoglobin assay.

* * * * *

(b) *Classification.* Class II (special controls). A control intended for use with an abnormal hemoglobin assay is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 48. In § 864.7455, revise paragraph (b) to read as follows:

§ 864.7455 Fetal hemoglobin assay.

* * * * *

(b) *Classification.* Class II (special controls). A fetal hemoglobin stain intended for use with a fetal hemoglobin assay is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 49. In § 864.7500, revise paragraph (b) to read as follows:

§ 864.7500 Whole blood hemoglobin assays.

* * * * *

(b) *Classification.* Class II (special controls). An acid hematin intended for use with whole blood hemoglobin assays is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 50. In § 864.7720, revise paragraph (b) to read as follows:

§ 864.7720 Prothrombin consumption test.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 51. In § 864.7735, revise paragraph (b) to read as follows:

§ 864.7735 Prothrombin-proconvertin test and thrombotest.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 52. In § 864.8150, revise paragraph (b) to read as follows:

§ 864.8150 Calibrator for cell indices.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 53. In § 864.8165, revise paragraph (b) to read as follows:

§ 864.8165 Calibrator for hemoglobin or hematocrit measurement.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 54. In § 864.8175, revise paragraph (b) to read as follows:

§ 864.8175 Calibrator for platelet counting.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 55. In § 864.8185, revise paragraph (b) to read as follows:

§ 864.8185 Calibrator for red cell and white cell counting.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 56. In § 864.8625, revise paragraph (b) to read as follows:

§ 864.8625 Hematology quality control mixture.

* * * * *

(b) *Classification.* Class II (special controls). Except when intended for use in blood components, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

■ 57. In § 864.9400, revise paragraph (b) to read as follows:

§ 864.9400 Stabilized enzyme solution.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 864.9.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 58. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 59. In § 866.2900, revise paragraph (b) to read as follows:

§ 866.2900 Microbiological specimen collection and transport device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

■ 60. In § 866.3395, revise paragraph (b) to read as follows:

§ 866.3395 Norovirus serological reagents.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9. The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Norovirus Serological Reagents.'' See § 866.1(e) for the availability of this guidance document.

■ 61. In § 866.5210, revise paragraph (b) to read as follows:

§ 866.5210 Ceruloplasmin immunological test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

■ 62. In § 866.5470, revise paragraph (b) to read as follows:

§ 866.5470 Hemoglobin immunological test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

■ 63. In § 866.5620, revise paragraph (b) to read as follows:

§ 866.5620 *Alpha*-2-macroglobulin immunological test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

■ 64. In § 866.5630, revise paragraph (b) to read as follows:

§ 866.5630 *Beta*-2-microglobulin immunological test system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

■ 65. In § 866.5750, revise paragraph (b) to read as follows:

§ 866.5750 Radioallergosorbent (RAST) immunological test system.

* * * * *

(b) *Classification.* Class II (special controls). The device, when intended to detect any of the allergens included in Table 1 in this paragraph, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9.

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS

Allergen code	Allergen product	Source (taxonomical name)
	Grass Pollens	
g1	Sweet vernal grass	*Anthoxanthum odoratum.*
g3	Cocksfoot grass, Orchard grass	*Dactylis glomerata.*
g4	Meadow fescue	*Festuca elatior.*
g5	Rye-grass (perennial rye grass)	*Lolium perenne.*
g7	Common reed (common reed grass)	*Phragmites communis.*
g8	Meadow grass, Kentucky blue (June grass)	*Poa pratensis.*
g9	Redtop, Bentgrass	*Agrostis stolonifera*, *Agrostis gigantea* (*Agrostis alba*).
g11	Brome grass	*Bromus inermis.*
g12	Cultivated rye (cultivated rye grass)	*Secale cereale.*
g13	Velvet grass	*Holcus lanatus.*
g14	Cultivated oat (cultivated oat grass)	*Avena sativa.*
g15	Cultivated wheat (cultivated wheat grass)	*Triticum aestivum* (*Triticum* spp.).
g16	Meadow foxtail (meadow foxtail grass)	*Alopecurus pratensis.*
g17	Bahia grass	*Paspalum notatum.*
g24	Wheat grass, Western	*Agropyron smithii* (*Elymus smithii*).
g30	Bluegrass, annual	*Poa annua.*
g70	Wild rye grass	*Elymus triticoides Elymus condensatus.*
g71	Canary grass	*Phalaris arundinacea.*
g201	Barley, cultivated	*Hordeum vulgare.*
g202	Maize, corn (cultivated corn)	*Zea mays.*
g203	Salt grass	*Distichlis spicata.*
g204	False oat-grass	*Arrhenatherum elatius.*
g216	Cyn d 1	*Cynodon dactylon.*
g701	Phl p 1.0102, Phl p 5.0101	*Phleum pratense.*
g702	Phl p 7.0101	*Phleum pratense.*
g703	Phl p 12.0101	*Phleum pratense.*
	Weed Pollens	
w2	Western ragweed	*Ambrosia psilostachya.*
w4	False ragweed	*Ambrosia acanthicarpa* (*Franseria acanthicarpa*).
w5	Wormwood	*Artemisia absinthium Artemisia annua.*
w6	Mugwort	*Artemisia vulgaris.*
w7	Marguerite, ox-eye daisy	*Chrysanthemum leucanthemum.*
w8	Dandelion	*Taraxacum vulgare*, *Taraxacum officinale.*
w9	Plantain (English), Ribwort	*Plantago lanceolata.*
w10	Goosefoot, lamb's quarters	*Chenopodium album.*
w11	Saltwort (prickly), Russian thistle	*Salsola kali* (*Salsola pestifer*).
w12	Goldenrod	*Solidago virgaurea* (*Solidago* spp.).
w13	Cocklebur, common	*Xanthium commune.*
w14	Common pigweed (rough pigweed)	*Amaranthus retroflexus.*
w15	Scale, Lenscale	*Atriplex lentiformis.*
w16	Rough marsh elder	*Iva ciliate*, *Iva annua.*
w17	Firebush (Kochia)	*Kochia scoparia.*
w18	Sheep sorrel	*Rumex acetosella.*
w19	Wall pellitory	*Parietaria officinalis.*
w20	Nettle (Common stinging nettle)	*Urtica dioica.*
w21	Wall pellitory	*Parietaria judaica.*
w22	Japanese hop (careless weed)	*Humulus japonicas* (*Humulus scandens*).
w23	Yellow dock, Yellow dockweed	*Rumex crispus.*
w24	Spiny pigweed	*Amaranthus spinosus.*
w27	Carnation	*Dianthus* spp.
w28	Rose	*Rosa rugosa.*
w33	Clover	*Trifolium pratense.*
w35	Mexican tea	*Chenopodium ambrosioides.*
w36	Rabbit bush	*Ambrosia deltoidea* (*Franseria deltoides*).
w37	Salt bush, annual	*Atriplex wrightii.*
w39	Water hemp, Western	*Amaranthus rudis* (*Acnida tamariscina*).
w41	Burrobrush	*Hymenoclea salsola.*
w42	Poverty weed	*Baccharis neglecta.*
w43	Common sagebrush	*Artemisia tridentata.*
w45	Alfalfa	*Medicago sativa.*
w46	Dog fennel	*Eupatorium capillifolium.*
w53	Geranium	*Geranium* spp.
w67	Groundsel bush	*Baccharis halimifolia.*
w69	Iodine bush	*Allenrolfea occidentalis.*
w70	Ragweed, slender	*Ambrosia confertiflora.*
w75	Wing scale (wingscale)	*Atriplex canescens.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
w82	Careless weed	*Amaranthus palmeri*, *Amaranthus hybridus.*
w90	Japanese hop	*Humulus japonicas* (*Humulus scandens*).
w203	Rape (rape pollen)	*Brassica napus.*
w204	Sunflower	*Helianthus annuus.*
w206	Camomile	*Matricaria chamomilla.*
w207	Lupin	*Lupinus* spp.
w210	Sugar-beet	*Beta vulgaris.*
w211	Par j 2.0101	*Parietaria judaica.*
w231	Art v 1	*Artemisia vulgaris* (Mugwort).
w232	Sal k 1	*Salsola kali.*
w233	Art v 3	*Artemisa vulgaris* (LTP, Mugwort).
w234	Pla l 1	*Plantago lanceolata.*
w235	Che a 1.0101	*Chenopodium album.*
w236	Mer a 1.0101	*Mercurialis annua.*
a753	Art v 1	*Artemisia vulgaris* (Mugwort weed).
	Tree Pollens	
t1	Box-elder (Maple)	*Acer negundo*, *Acer saccharum.*
t2	Gray alder, speckled alder (alder)	*Alnus incana.*
t4	Hazel, hazelnut	*Corylus avellana*, *Corylus americana.*
t5	American beech (beech)	*Fagus grandifolia* (*Fagus americana*).
t6	Mountain juniper, Mountain cedar	*Juniperus ashei* (*Juniperus sabinoides*).
t8	Elm	*Ulmus americana.*
t9	Olive	*Olea europaea.*
t10	Walnut	*Juglans californica*, *Juglans nigra.*
t11	Maple leaf sycamore, London plane, Plane tree	*Platanus acerifolia.*
t61	Sycamore	*Platanus occidentalis.*
t12	Willow	*Salix caprea*, *Salix nigra.*
t14	Cottonwood (Eastern Cottonwood/Black Cottonwood)	*Populus deltoides.*
t15	White ash	*Fraxinus americana.*
t16	White pine	*Pinus strobus.*
t18	Eucalyptus, gum-tree	*Eucalyptus globulus* (*Eucalyptus* spp.).
t19/t26	Acacia	*Acacia longifolia* (*Acacia* spp.).
t20	Mesquite	*Prosopis glandulosa/Prosopis juliflora.*
t21	Melaleuca, cajeput tree	*Melaleuca quinquenervia* (*Melaleuca leucadendron*).
t22	Pecan, hickory	*Carya illinoinensis* (*Carya pecan*).
t23	Italian/Mediterranean/funeral cypress	*Cupressus sempervirens.*
t24	Japanese cypress	*Chamaecyparis obtusa* (*Chamaecyparis* spp.).
t25	Ash	*Fraxinus excelsior.*
t27	Maple, red	*Acer rubrum.*
t29	Acacia	*Acacia* spp.
t30	Birch, white	*Betula populifolia.*
t32	Willow, black	*Salix nigra.*
t33	Ash, Arizona	*Fraxinus velutina.*
t35	Cedar, salt	*Tamarix gallica.*
t37	Bald cypress (white bald cypress)	*Taxodium distichum.*
t38	Elm, Chinese/Siberian	*Ulmus pumila.*
t40	Hazelnut tree	*Corylus americana.*
t41	White hickory	*Carya alba* (*Carya tomentosa*).
t42	Oak, red	*Quercus rubra.*
t43	Loblolly pine	*Pinus taeda.*
t44	Hackberry	*Celtis occidentalis.*
t45	Cedar elm	*Ulmus crassifolia.*
t47	Juniper, one seed	*Juniperus monosperma.*
t48	Pine, lodgepole	*Pinus contorta.*
t49	Pine, ponderosa	*Pinus ponderosa.*
t50	Beech, European	*Fagus sylvatica.*
t51	Tree of Heaven	*Ailanthus altissima.*
t52	Western white pine	*Pinus monticola.*
t54	Russian olive	*Elaeagnus angustifolia.*
t55	Scotch broom	*Cytisus scoparius.*
t56	Bayberry	*Myrica cerifera.*
t57	Red cedar	*Juniperus virginiana.*
t60	Western juniper	*Juniperus occidentalis.*
t61	Sycamore	*Platanus occidentalis.*
t70	Mulberry (white mulberry)	*Morus alba.*
t71	Red mulberry	*Morus rubra.*
t72	Queen palm	*Arecastrum romanzoffiamon.*
t73	Australian pine	*Casuarina equisetifolia.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
t77	Oak mix (red, white, black)	*Quercus* spp.
t80	Japanese cypress	*Chamaecyparis obtusa.*
t81	Japanese alder	*Alnus japonica.*
t83	Mango tree	*Mangifera indica.*
t90	Walnut, black	*Juglans nigra.*
t96	Poplar, white (poplar)	*Populus alba.*
t103/t218	Virginia live oak (live oak)	*Quercus virginiana.*
t105	Pepper tree	*Schinus molle.*
t110	Orange tree	*Citrus sinensis.*
t201	Spruce, Norway spruce	*Picea abies* (*Picea excelsa*).
t202	Alder, smooth	*Alnus incana* spp. *Rugosa* (*Alnus rugosa*).
t203	Horse chestnut	*Aesculus hippocastanum.*
t205	Elder	*Sambucus nigra.*
t206	Chestnut	*Castanea sativa.*
t207	Douglas fir	*Pseudotsuga menziesii* (*Pseudotsuga taxifolia*).
t208	Linden	*Tilia cordata.*
t209	Horn beam	*Carpinus betulus.*
t210	Privet	*Ligustrum vulgare.*
t211	Sweet gum	*Liquidambar styraciflua.*
t212	Cedar	*Libocedrus decurrens.*
t213	Pine	*Pinus radiata.*
t214	Date palm	*Phoenix canariensis.*
t215	Lilac	*Syringa vulgaris.*
t217	Pepper tree	*Schinus molle.*
t217	Red alder	*Alnus rubra.*
t218	Virginia live oak	*Quercus virginiana.*
t218	Bayberry (bayberry/sweet gale)	*Myrica gale.*
t219	Palo verde	*Cercidium floridum.*
t219	Red cedar	*Juniperus virginiana.*
t220	Bet v 4	*Betula verrucosa* (Birch).
t221	Bet v 2.0101, Bet v 4	*Betula verrucosa* (Birch).
t222	Cypress (Arizona cypress)	*Cupressus arizonica.*
t223	Oil palm	*Elaeis guineensis.*
t224	Ole e 1	*Olea europaea.*
t225	Bet v 6	*Betula verrucosa* (Birch).
t226	Cup a 1	*Cupressus arizonica.*
t227	Ole e 7	*Olea Europaea.*
t228	Aspen, quaking	*Populus tremuloides.*
t229	Eastern hemlock	*Tsuga canadensis.*
t230	Redwood (sequoia)	*Sequoia sempervirens.*
t232	Pussy willow	*Salix discolor.*
t240	Ole e 9.0101	*Olea Europaea.*
t241	Pla a 1.0101	*Platanus acerifolia.*
t242	Pla a 2	*Platanus acerifolia.*
t243	Pla a 3.0101	*Platanus acerifolia.*
t244	Cor a 1.0103	*Corylus avellana.*
t245	Aln g 1.0101	*Alnus glutinosa.*
t246	Cry j 1	*Cryptomeria japonica.*
t280	Locust tree	*Robinia pseudoacacia.*
t401	Brazilian peppertree	*Schinus terebinthifolius.*
t402	Mastic tree	*Pistacia lentiscus.*
t404	Tree of heaven	*Ailanthus altissima.*
t406	Date palm	*Phoenix dactylifera.*
a482	Ole e 1	*Olea europaea* (Olive Oil).
	Mites	
d207	Blo t 5.0101	*Blomia tropicalis.*
d208	Lep d 2.0101	*Lepidoglyphus destructor.*
	Microorganisms, Molds, Yeast	
m1	*Penicillium chrysogenum* (*Penicillium notatum*)	*Penicillium chrysogenum* (*Penicillium notatum*).
m2	*Cladosporium herbarum* (*Hormodendrum*)	*Cladosporium herbarum* (*Hormodendrum*).
m3	*Aspergillus fumigatus*	*Aspergillus fumigatus.*
m4	*Mucor racemosus*	*Mucor racemosus.*
m5	*Candida albicans*	*Candida albicans.*
m7	*Botrytis cinerea*	*Botrytis cinerea.*
m8	*Drechslera halodes* (*Setomelanomma rostrata, Helminthosporium halodes, Helminthosporium interseminatum*).	*Drechslera halodes* (*Setomelanomma rostrata, Helminthosporium halodes.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
m9	*Fusarium moniliforme* (*Fusarium proliferatum*)	*Fusarium moniliforme* (*Fusarium proliferatum*).
m10	*Stemphylium botryosum*	*Stemphylium herbarum* (*Stemphylium botryosum*).
m11	*Rhizopus nigricans*	*Rhizopus nigricans.*
m12	*Aureobasidium pullulans*	*Aureobasidium pullulans.*
m13	*Phoma betae*	*Phoma betae.*
m14	*Epicoccum purpurascens*	*Epicoccum purpurascens* (*Epicoccum nigrum*).
m15	*Trichoderma viride*	*Trichoderma viride.*
m16	*Curvularia lunata*	*Curvularia lunata*, *Curvularia specifera* (*K923044*).
m17	*Cladosporium fulvum*	*Cladosporium fulvum.*
m18	*Fusarium culmorum*	*Fusarium culmorum.*
m19	*Aspergillus versicolor*	*Aspergillus versicolor.*
m20	*Mucor mucedo*	*Mucor mucedo.*
m21	*Aspergillus clavatus*	*Aspergillus clavatus.*
m22	*Micropolyspora faeni*	*Saccharopolyspora rectivirgula* (*Micropolyspora faeni*).
m23	*Thermoactinomyces vulgaris*	*Thermoactinomyces vulgaris.*
m24	*Stachybotrys atra*	*Stachybotrys chartarum* (*Stachybotrys atra*).
m24	*Paecilomyces* spp	*Paecilomyces* spp.
m25	*Aspergillus versicolor*	*Aspergillus versicolor.*
m25	*Penicillium brevicompactum*	*Penicillium brevicompactum.*
m26	*Cladosporium cladosporioides*	*Cladosporium cladosporioides.*
m26	*Penicillium citrinum*	*Penicillium citrinum.*
m27	*Penicillium* spp	*Penicillium* spp.
m29	*Aspergillus repens*	*Aspergillus repens.*
m30	*Penicillium roqueforti*	*Penicillium roqueforti.*
m32	*Cladosporium cladosporioides*	*Cladosporium cladosporioides.*
m34	*Serpula lacrymans*	*Serpula lacrymans.*
m36	*Aspergillus terreus*	*Aspergillus terreus.*
m37	*Trichophyton mentagrophytes*	*Trichophyton mentagrophytes.*
m40	*Aspergillus amstelodami*	*Aspergillus amstelodami.*
m43	*Saccharomyces Carlsberg*	*Saccharomyces carlsbergensis.*
m44	*Saccharomyces cerevisiae*	*Saccharomyces cerevisiae.*
m45	*Hormodendrum hordei*	*Hormodendrum hordei.*
m46	*Bipolaris spicifera*	*Bipolaris spicifera.*
m47	*Aspergillus nidulans*	*Aspergillus nidulans.*
m48	*Aspergillus oryzae*	*Aspergillus oryzae.*
m49	*Fusarium oxysporum*	*Fusarium oxysporum.*
m50	*Micropolyspora faeni*	*Saccharopolyspora rectivirgula* (*Micropolyspora faeni*).
m51	*Thermoactinomyces vulgaris*	*Thermoactinomyces vulgaris.*
m53	*Microspora canis*	*Microsporum canis* (*Microspora canis*).
m54	*Aspergillus flavus*	*Aspergillus flavus.*
m63	*Helminthosporium intersemin*	*Helminthosporium intersemin.*
m66	*Mucor plumbeus*	*Mucor plumbeus.*
m67	*Mycogone*	*Mycogone perniciosa.*
m68	*Nigrospora oryzae*	*Nigrospora oryzae.*
m69	*Rhodotorula*	*Rhodotorula rubra* (*Rhodotorula mucilaginosa*).
m70	*Malassezia furfur* (*Pityrosporum orbiculare*)	*Malassezia furfur* (*Pityrosporum orbiculare*).
m71	*Spondylocladium*	*Spondylocladium* spp.
m72	*Epidermophyton*	*Epidermophyton floccosum.*
m73	*Epicoccum nigrum*	*Epicoccum purpurascens* (*Epicoccum nigrum*).
m80	*Staphylococcal enterotoxin A* (*Sta a SEA*)	*Staphylococcus aureus.*
m80	*Helminthosporium* spp	*Helminthosporium* spp.
m81	*Staphylococcal enterotoxin B* (*Sta a SEB*)	*Staphylococcus aureus.*
m88	*Stemphylium solani*	*Stemphylium solani.*
m93	*Gliocladium fimbriatum*	*Gliocladium fimbriatum.*
m94	*Phycomyces blakesleeanus*	*Phycomyces blakesleeanus.*
m201	*Tilletia tritici* (*Ustilago nuda, Ustilago tritici*) (Barley smut)	*Tilletia tritici* (*Ustilago nuda, Ustilago tritici*).
m202	*Acremonium kiliense* (*Cephalosporium acremonium*)	*Acremonium kiliense* (*Cephalosporium acremonium*).
m203	*Trichosporon pullulans*	*Trichosporon pullulans.*
m204	*Ulocladium chartarum*	*Ulocladium chartarum.*
m205	*Trichophyton rubrum*	*Trichophyton rubrum.*
m207	*Aspergillus niger*	*Aspergillus niger.*
m208	*Chaetomium globosum*	*Chaetomium globosum.*
m209	*Penicillium frequentans*	*Penicillium glabrum* (*Penicillium frequentans*).
m209	*Stachybotrys chartarum*	*Stachybotrys chartarum* (*Stachybotrys atra*).
m210	*Trichophyton mentagrophytes var. goetzii*	*Trichophyton mentagrophytes var. goetzii.*
m211	*Trichophyton mentagrophytes var. interdigitale*	*Trichophyton mentagrophytes var. interdigitale.*
m211	Oat smut	*Ustilago avenae.*
m212	*Micropolyspora faeni*	*Saccharopolyspora rectivirgula* (*Micropolyspora faeni*).
m212	*Geotrichum candidum*	*Geotrichum candidum.*
m213	Bermuda grass smut	*Ustilago cynodontis.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
m214	Johnson grass smut	*Sphacelotheca cruenta.*
m215	Corn smut	*Ustilago maydis.*
m218	Asp f 1.0101	*Aspergillus fumigatus.*
a3050	Asp r 1	*Aspergillus restrictus.*
m219	Asp f 2	*Aspergillus fumigatus.*
m220	Asp f 3.0101	*Aspergillus fumigatus.*
m221	Asp f 4	*Aspergillus fumigatus.*
m222	Asp f 6.0101	*Aspergillus fumigatus.*
m223	*Staphylococcal enterotoxin C* (*Sta a SEC*)	*Staphylococcus aureus.*
m224	*Staphylococcal enterotoxin D* (*Sta a SED*)	*Staphylococcus aureus.*
m226	*Staphylococcal enterotoxin TSST* (*Sta a TSST*)	*Staphylococcus aureus.*
m227	*Malassezia* spp. (*Pityrosporum* spp.)	*Malassezia* spp. (*Pityrosporum* spp.).
m228	*Aspergillus flavus.*.	
m229	Alt a 1.0101	*Alternaria alternata* (*Alternaria tenuis*).
m230	Alt a 6.0101	*Alternaria alternata* (*Alternaria tenuis*).
m231	Cla h 8.0101	*Cladosporium herbarum* (*Hormodendrum*).
m300	*Eurotium* spp	*Eurotium* spp.
m304	*Aspergillus oryzae*	*Aspergillus oryzae.*
m305	*Penicillium brevicompactum*	*Penicillium brevicompactum.*
m309	*Aspergillus terreus*	*Aspergillus terreus.*
m310	*Aspergillus nidulans*	*Aspergillus nidulans.*
m311	*Aspergillus flavus*	*Aspergillus flavus.*
m312	*Aspergillus clavatus*	*Aspergillus clavatus.*
	Epidermal & Animal	
e6	Guinea pig epithelium	*Cavia porcellus.*
e7	Pigeon droppings	*Columba palumbus*, *Columba livia.*
e25	Chicken serum	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
e26	Parrot serum	*Psittacoidea* spp.
e62	Camel	*Camelus dromedaries.*
e70	Goose feathers	*Anser anser.*
e71	Mouse epithelium	*Mus musculus* (*Mus* spp.).
e73	Rat epithelium	*Rattus norvegicus.*
e74	Rat urine proteins	*Rattus norvegicus*, *Rattus rattus.*
e75	Rat serum proteins	*Rattus norvegicus*, *Rattus rattus.*
e76	Mouse serum proteins	*Mus musculus* (*Mus* spp.).
e77	Budgerigar droppings	*Melopsittacus undulatus.*
e78	Budgerigar feathers	*Melopsittacus undulatus.*
e79	Budgerigar serum proteins	*Melopsittacus undulatus.*
e80	Goat epithelium	*Capra hircus.*
e81	Sheep epithelium	*Ovis aries* (*Ovis* spp.).
e82	Rabbit epithelium	*Oryctolagus cuniculus* (*Oryctolagus* spp.).
e83	Swine epithelium	*Sus scrofa* (*Sus scrofa domesticus; Sus* spp.).
e84	Hamster epithelium	*Cricetus cricetus, Mesocricetus auratus, and Phodopus sungorus.*
e85	Chicken feathers	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
e86	Duck feathers	*Anas platyrhynchos.*
e87	Rat epithelium, serum proteins, and urine proteins	*Rattus norvegicus Rattus rattus.*
e88	Mouse epithelium, serum proteins, and urine proteins (mouse).	*Mus musculus* (*Mus* spp.).
e89	Turkey feathers	*Meleagris gallopavo.*
e90	Budgerigar serum proteins, feathers, and droppings	*Melopsittacus undulatus.*
e91	Pigeon serum proteins, feathers, and droppings	*Streptopelia roseogrisea*, *Psittacidae* spp.
e92	Parrot serum proteins, feathers, and droppings	*Ara* spp.
e93	Pigeon serum proteins	*Streptopelia roseogrisea.*
e94	Fel d 1.0101	*Felis domesticus.*
a345	Fel d 1	*Felis domesticus.*
e98	Parrot droppings	*Psittacoidea* spp.
e101	Can f 1.0101	*Canis familiaris* (*Canis domesticus*).
a174	Can f 1	*Canis familiaris* (*Canis domesticus*).
e102	Can f 2.0101	*Canis familiaris* (*Canis domesticus*).
e196	Parakeet feathers	*Nymphicus hollandicus.*
e197	Parakeet droppings	*Nymphicus hollandicus.*
e198	Parakeet serum	*Nymphicus hollandicus.*
e199	Canary bird serum	*Serinus canarius.*
e200	Canary bird droppings	*Serinus canarius.*
e201	Canary bird feathers (Canary feathers)	*Serinus canarius.*
e202	Reindeer epithelium	*Rangifer tarandus.*
e203	Mink epithelium	*Mustela* spp.

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
e204	Bos d 6	*Bos domesticus* (*Bos taurus; Bos* spp.).
e205	Horse, serum proteins	*Equus caballus* (*Equus* spp.).
e206	Rabbit, serum proteins	*Oryctolagus cuniculus* (*Oryctolagus* spp.).
e208	Chinchilla epithelium	*Chinchilla laniger.*
e209	Gerbil epithelium	*Meriones unguiculatus.*
e210	Fox epithelium	*Vulpes vulpes.*
e211	Rabbit, urine proteins	*Oryctolagus cuniculus* (*Oryctolagus* spp.).
e212	Swine, urine proteins	*Sus scrofa* (*Sus scrofa domesticus; Sus* spp.).
e213	Parrot feathers	*Ara* spp.
e214	Finch feathers	*Lonchura domestica.*
e215	Pigeon feathers	*Streptopelia roseogrisea* (*Streptopelia* spp.), *Columbia* spp.
e216	Deer epithelium	*Dama dama.*
e217	Ferret epithelium	*Mustela putorius.*
e218	Chicken droppings	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
e219	Chicken, serum proteins	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
e220	Fel d 2, Cat serum albumin	*Felis domesticus.*
e221	Can f 3	*Canis familiaris* (*Canis domesticus*) (*Dog serum albumin*).
e222	Swine serum albumin (Sus s PSA)	*Sus scrofa* (*Sus scrofa domesticus; Sus* spp.).
e225	Lovebird feathers	*Psittacoidea agapomis.*
e226	Can f 5.0101	*Canis familiaris.*
e227	Equ c 1.0101	*Equus caballus.*
e228	Fel d 4.0101	*Felis domesticus.*
e230	Equ c 3	*Equus caballus.*
e231	Mus m 1	*Mus musculus.*
	Food	
f9	Rice	*Oryza sativa.*
f12	Pea (green pea)	*Pisum sativum.*
f15	White bean	*Phaseolus vulgaris.*
f19	Cayenne pepper	*Capsicum frutescens* (*Capsicum annum*).
f21	Sugar cane	*Saccharum officinarum.*
f22	Raspberry	*Rubus idaeus.*
f26	Pork	*Sus scrofa* (*Sus scrofa domesticus; Sus* spp.).
f29	Watermelon	*Citrullus lanatus* (*Citrullus vulgaris*).
f31	Carrot	*Daucus carota.*
f32	Oyster mushroom	*Pleurotus ostreatus.*
f33	Orange	*Citrus sinensis.*
f35	Potato	*Solanum tuberosum.*
f43	Mother's milk	*Homo sapiens.*
f44	Strawberry	*Fragaria vesca* (*Fragaria* spp.).
f45	Yeast, baker's	*Saccharomyces cerevisiae.*
f46	Pepper, Red	*Capsicum annuum.*
f47	Garlic	*Allium sativum.*
f48	Onion	*Allium cepa.*
f49	Apple	*Malus x domestica* (*Malus* spp.).
f51	Bamboo shoot	*Phyllostachys pubescens.*
f52	Cacao/chocolate	*Theobroma cacao.*
f54	Sweet potato	*Ipomoea batatas.*
f55	Common millet	*Panicum miliaceum.*
f56	Foxtail millet	*Setaria italica.*
f57	Japanese millet	*Echinochloa crus-galli.*
f58	Pacific squid	*Todarodes pacificus.*
f59	Octopus	*Octopus vulgaris* (*Octopus* spp.).
f63	Kefir	NA.
f67	Parmesan cheese	NA.
f81	Cheese, cheddar type	NA.
f82	Cheese, mold type	NA.
f83	Chicken	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
f86	Parsley	*Petroselinum crispum.*
f87	Melon	*Cucumis melo Cucumis melo + Citrullus lanatus.*
f88	Mutton (lamb)	*Ovis aries* (*Ovis* spp.).
f90	Malt	*Hordeum vulgare.*
f92	Banana	*Musa* spp.
f93	Cacao	*Theobroma cacao.*
f94	Pear	*Pyrus communis* (*Pyrus* spp.).
f97	Yam	*Dioscorea* spp. *Dioscorea opposita.*
f97	Chamomile tea	*Matricaria chamomilla.*
f98	Gliadin	*Triticum aestivum* (*Triticum* spp.).
f102	Cantaloupe	*Cucumis melo var. cantalupensis.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
f105	Chocolate	*Theobroma cacao.*
f109	Cottonseed	*Gossypium hirsutum.*
f110	Giant radish	*Raphanus sativus.*
f118	Zucchini	*Cucurbita pepo.*
f119	Radish	*Raphanus sativus.*
f120	Venison	*Capreolus capeolus.*
f121	Pinto bean	*Phaseolus vulgaris.*
f122	Cheese, American	NA.
f127	Black-eyed pea	*Vigna unguiculata.*
f131	Black Olive	*Olea europaea.*
f136	Red beet	*Beta vulgaris var. conditiva.*
f139	Goat's Cheese	*Capra aegagrus.*
f140	Bran	NA.
f141	Corn (vegetables)	*Zea mays.*
f152	Green bell pepper	*Capsicum annuum.*
f155	Brewer's yeast	*Saccharomyces carlsbergensis.*
f157	Duck	*Anas domesticus.*
f158	Goose	*Anser anser.*
f160	Camembert cheese	NA.
f162	Nectarine	*Prunus persica var. nucipersica.*
f163	Kohlrabi	*Brassica oleracea var. gongylodes.*
f65	Perch.	
f166	Leek	*Allium porrum.*
f170	Cheese (Switzerland) (Swiss cheese)	NA.
f174	Fig	*Ficus carica.*
f177	Cranberry	*Vaccinium macrocarpon.*
f179	Raisin	*Vitis* spp.
f182	Lima bean	*Phaseolus lunatus.*
f198	Flaxseed (bruised grain)	*Linum usitatissimum.*
f199	Untreated native milk	*Bos domesticus* (*Bos taurus; Bos* spp.).
f208	Lemon	*Citrus limon.*
f209	Grapefruit	*Citrus paradisi.*
f210	Pineapple	*Ananas comosus.*
f211	Blackberry	*Rubus fruticosus.*
f212	Mushroom (champignon)	*Agaricus hortensis* (*Agaricus* spp.).
f213	Rabbit	*Oryctolagus cuniculus* (*Oryctolagus* spp.).
f214	Spinach	*Spinacia oleracea.*
f215	Lettuce	*Lactuca sativa.*
f216	Cabbage	*Brassica oleracea var. capitata.*
f217	Brussels sprouts	*Brassica oleracea var. gem.*
f218	Paprika, sweet pepper	*Capsicum annuum.*
f219	Fennel seed	*Foeniculum vulgare.*
f219	Sage	*Salvia officinalis.*
f220	Cinnamon	*Cinnamomum* spp.
f221	Coffee	*Coffea* spp.
f222	Tea	*Camellia sinensis.*
f223	Green olive	*Olea europaea.*
f225	Summer squash, pumpkin	*Cucurbita pepo.*
f225	Pumpkin	*Cucurbita maxima.*
f226	Pumpkin seed	*Cucurbita pepo.*
f227	Sugar-beet seed	*Beta vulgaris.*
f229	Safflower Seed	*Carthamus tinctorius.*
f231	Milk, boiled	*Bos domesticus* (*Bos taurus; Bos* spp.).
f234	Vanilla	*Vanilla planifolia.*
f237	Apricot	*Prunus armeniaca.*
f241	Gouda cheese	NA.
f242	Cherry	*Prunus avium.*
f244	Cucumber	*Cucumis sativus.*
f246	Guar, guar gum	*Cyamopsis tetragonoloba.*
f247	Honey	NA.
f248	Rosemary	*Rosmarinus officinalis.*
f254	Plaice	*Pleuronectes platessa.*
f255	Plum	*Prunus domestica*, *Prunus americana.*
f258	Squid	*Loligo* spp.
f259	Grape	*Vitis vinifera* (*Vitis* spp.).
f260	Broccoli	*Brassica oleracea var. italica* (*Brassica oleracea var. cultivar*).
f261	Asparagus	*Asparagus officinalis.*
f262	Aubergine, eggplant	*Solanum melongena.*
f263	Green pepper	*Piper nigrum*, *Capsicum annuum.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
f264	Eel	*Anguilla anguilla.*
f265	Caraway	*Carum carvi.*
f265	Cumin	*Cuminum cyminum.*
f266	Mace	*Myristica fragrans.*
f267	Cardamon	*Elettaria cardamomum.*
f268	Clove	*Syzygium aromaticum.*
f269	Basil	*Ocimum basilicum.*
f270	Ginger	*Zingiber officinale.*
f271	Anise	*Pimpinella anisum.*
f272	Tarragon	*Artemisia dracunculus.*
f273	Thyme	*Thymus vulgaris.*
f274	Marjoram	*Origanum majorana.*
f275	Lovage	*Levisticum officinale.*
f276	Fennel, fresh	*Foeniculum vulgare.*
f277	Dill	*Anethum graveolens.*
f278	Bay leaf	*Laurus nobilis.*
f279	Chili pepper	*Capsicum frutescens.*
f280	Black pepper	*Piper nigrum.*
f281	Curry (Santa Maria)	NA.
f282	Nutmeg	*Myristica fragrans.*
f283	Oregano	*Origanum vulgare.*
f284	Turkey meat	*Meleagris gallopavo.*
f285	Elk/moose meat	*Alces* spp.
f286	Mare's milk	*Equus caballus* (*Equus* spp.).
f287	Red kidney bean	*Phaseolus vulgaris.*
f288	Blueberry	*Vaccinium myrtillus* (*Vaccinium* spp.).
f289	Date	*Phoenix dactylifera.*
f291	Cauliflower	*Brassica oleracea var. botrytis.*
f292	Guava	*Psidium guajava.*
f293	Papaya	*Carica papaya.*
f294	Passion fruit, Maracuja	*Passiflora edulis* (*Passiflora* spp.).
f295	Carambola	*Averrhoa carambola.*
f296	Carob	*Ceratonia siliqua.*
f297	Gum Arabic	*Acacia senegal* (*Acacia* spp.).
f298	Tragacanth	*Astragalus* spp.
f299	Sweet chestnut (chestnut)	*Castanea sativa.*
f300	Pinto bean	*Phaseolus* spp.
f301	Persimmon (kaki fruit, sharon)	*Diospyros kaki.*
f302	Mandarin (tangerine, clementine, satsumas)	*Citrus reticulata.*
f305	Fenugreek	*Trigonella foenum-graecum.*
f306	Lime	*Citrus aurantifolia.*
f307	Hake	*Merluccius merluccius.*
f308	Sardine (pilchard)	*Sardina pilchardus.*
f310	Blue vetch	*Lathyrus sativus.*
f311	Megrim	*Lepidorhombus whiffiagonis.*
f315	Green bean	*Phaseolus vulgaris.*
f316	Rape seed	*Brassica napus.*
f317	Coriander	*Coriandrum sativum.*
f318	Jack fruit	*Artocarpus heterophyllus.*
f319	Beetroot	*Beta vulgaris.*
f320	Crayfish	*Astacus astacus.*
f321	Horse meat	*Equus caballus* (*Equus* spp.).
f322	Red currant	*Ribes sylvestre.*
f324	Hop (fruit cone)	*Humulus lupulus.*
f325	Saffron	*Colchicum autumnale.*
f328	Fig	*Ficus carica.*
f329	Watermelon	*Citrullus lanatus.*
f330	Rose hip	*Rosa* spp.
f331	Saffron	*Crocus sativus.*
f332	Mint	*Mentha piperita.*
f333	Linseed	*Linum usitatissimum.*
f336	Jujube	*Ziziphus jujuba.*
f336	Wine vinegar	*Vitis vinifera* (*Vitis* spp.).
f337	Sole	*Solea solea.*
f337	English sole	*Parophrys vetulus.*
f338	Wine, white	*Vitis vinifera* (*Vitis* spp.).
f339	Allspice	*Pimenta dioica.*
f339	Wine, red	*Vitis vinifera* (*Vitis* spp.).
f341	Cranberry	*Vaccinium oxycoccus*, *Vaccinium macrocarpon.*
f342	Olive (black, fresh)	*Olea europaea.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
f343	Raspberry	*Rubus idaeus.*
f344	Sage	*Salvia officinalis.*
f346	Chives	*Allium schoenoprasum.*
f347	Quinoa	*Chenopodium quinoa.*
f348	Litchi	*Litchi chinensis.*
f349	Chum salmon roe	*Oncorhynchus keta.*
f358	Artichoke	*Cynara scolymus.*
f360	Yogurt	NA.
f368	Black bass	*Micropterus dolomieu* (*Micropterus dolomieui*).
f374	Karaya gum	*Sterculia urens.*
f375	Horseradish	*Armoracia rusticana.*
f377	Maple syrup	NA.
f379	Okra	*Abelmoschus esculentus.*
f382	Beet, sugar	*Beta vulgaris var. altissima.*
f401	Loquat	*Eriobotrya japonica.*
f402	Fig	*Ficus carica.*
f403	Brewer's yeast	*Saccharomyces cerevisiae.*
f405	Mint	*Mentha* spp.
f406	Arugula	*Eruca vesicaria.*
House Dust		
h1	Greer Labs., Inc	NA.
h2	Hollister-Stier Labs	NA.
h6	Japan	NA.
Venoms & Insects		
i7	Midge	*Chironomus yoshimatsui.*
i8	Moth	*Bombyx mori*, *Heterocera* spp.
i47	Water flea	*Daphnia* spp.
i49	Deer fly	*Chrysops* spp.
i51	Black ant	*Camponotus pennsylvanicus.*
i54	Flea mix (dog/cat), common flea	*Ctenocephalides* spp.
i71	Mosquito	*Aedes communis*, *Aedes* spp. *and Culex* spp.
i72	Green nimitti	*Cladotanytarsus lewisi.*
i73	Blood worm	*Chironomus thummi*, *Chironomusri parius*, *Chironomus* spp.
i75	European hornet	*Vespa crabro.*
i76	Berlin beetle	*Trogoderma angustum.*
i77	European paper wasp	*Polistes dominulus.*
i78	Fly	*Musca domestica.*
i80	Bumblebee	*Bombus pennsylvanicus.*
i201	Horse bot fly	*Gasterophilus intestinalis.*
i202	Grain weevil	*Sitophilus granarius.*
i203	Mediterranean flour moth	*Ephestia kuehniella* (*Anagasta kuehniella*).
i204	Horse fly	*Tabanus* spp.
i205	Bumblebee	*Bombus terrestris.*
i208	Api m 1.0101	*Apis mellifera.*
a45	Api m 1	*Apis mellifera.*
i209	Ves v 5.0101	*Vespula vulgaris.*
a670	Ves v 5	*Vespula vulgaris.*
i210	Pol d 5.0101	*Polistes dominulus.*
i211	Ves v 1.0101	*Vespula vulgaris.*
i213	Api m 4	*Apis mellifera.*
i214	Api m 2	*Apis mellifera.*
i215	Api m 3	*Apis mellifera.*
i216	Api m 5	*Apis mellifera.*
i217	Api m 10	*Apis mellifera.*
i220	Bla g 1.0101	*Blattella germanica.*
i221	Bla g 2.0101	*Blattella germanica.*
i222	Bla g 5.0101	*Blattella germanica.*
i223	Bla g 7	*Blattella germanica.*
a46	Api m 2	*Apis mellifera.*
Miscellaneous		
o1	Cotton, crude fibers	*Gossypium* spp.
o3	Cotton (treated)	*Gossypium* spp.
o70	Seminal fluid	*Homo sapiens.*
o71	*Staphylococcus aureus*	*Staphylococcus aureus.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
o72	*Pichia pastoris* crude extract customer specific	*Pichia pastoris.*
o72	Sperm-sediment	*Homo sapiens.*
o73	*Pichia pastoris* crude extr. vector customer specific	*Pichia pastoris.*
o74	*Pichia pastoris* with vector customer specific	*Pichia pastoris.*
o201	Tobacco leaf, tobacco dust	*Nicotiana tabacum.*
o202	Artemia salina, fish feed	*Artemia salina.*
o203	Tetramin, fish feed	NA.
o207	Daphnia, fish feed	*Daphnia* spp.
o211	Mealworm	*Tenebrio molitor.*
o212	Streptavidin	*Streptomyces avidini.*
o213	MBP (maltose binding protein)	*Escherichia coli.*
o214	CCD; MUXF3 from bromelain	*Ananas comosus.*
o72	Enterotoxin A (Sta a SEA)	*Staphylococcus aureus.*
o73	Enterotoxin B (Sta a SEB)	*Staphylococcus aureus.*
Parasites		
p1	Ascaris	*Ascaris suum.*
p2	Echinococcus	*Echinococcus granulosus.*
p3	Schistosoma	*Schistosoma mansoni.*
p4	Anisakis (Herring Worm)	*Anisakis simplex* (*Anisakis* spp.).
p5	Toxocara canis	*Toxocara canis.*
p10	Ani s 3.0101	*Anisakis simplex* (*Anisakis* spp.).
p11	Ani s 1	*Anisakis simplex* (*Anisakis* spp.).
Occupational		
k4	Threshing dust	NA.
k5	Flax	NA.
k7	Hay Dust	NA.
k8	Hop (hops)	*Humulus lupulus.*
k12	Grain mill dust	NA.
k14	Kapok	NA.
k20	Sheep's wool (treated) (wool)	*Ovis aries* (*Ovis* spp.).
k21	Sheep's wool (Untreated)	*Ovis aries* (*Ovis* spp.).
k23	Straw Dust	NA.
k33	Oak	NA.
k70	Green coffee bean	*Coffea* spp.
k71	Castor bean	*Ricinus communis.*
k72	Ispaghula	*Plantago psyllium/Plantago ovata.*
k73	Silk waste	NA.
k74	Silk	*Bombyx mori.*
k75	Isocyanate TDI (Toluene diisocyanate)	NA.
k76	Isocyanate MDI (Diphenylmethane diisocyanate)	NA.
k77	Isocyanate HDI (Hexamethylen diisocyanate)	NA.
k78	Ethylene oxide	NA.
k79	Phthalic anhydride	NA.
k80	Formaldehyde/Formalin	NA.
k81	Ficus	*Ficus benjamina* (*Ficus* spp.).
k83	Cotton seed	*Gossypium hirsutum.*
k84	Sunflower seed	*Helianthus annuus.*
k85	Chloramin T	NA.
k86	Trimellitic anhydride, TMA	NA.
k87	Asp o 21, alpha-amylase	*Aspergillus oryzae.*
k89	Orris root	*Iris florentina.*
k99	HSA (Human Serum Albumin) (Hom s HSA)	*Homo sapiens.*
k201	Car p 1, Papain	*Carica papaya.*
k202	Ana c 2, Bromelain	*Ananas comosus.*
k204	Maxatase	*Bacillus licheniformis.*
k205	Alcalase	*Bacillus* spp.
k206	Savinase, Protease 1 (Bac l Subtilisin)	*Bacillus* spp.
k208	Gal d 4, Lysozyme	*Gallus domesticus* (*Gallus gallus domesticus; Gallus* spp.).
k209	Hexahydrophtalic anhydrid	NA.
k210	Maleic anhydride	NA.
k211	Methyltetrahydrophtalic anhydrid	NA.
k212	Abachi wood dust	*Triplochiton scleroxylon.*
k213	Pepsin (Sus s Pepsin)	*Sus scrofa* (*Sus scrofa domesticus; Sus* spp.).
k213	TCPA	NA.
k214	Bougainvillea	*Bougainvillea* spp.
k225	Horse radish peroxidase (Arm r HRP)	*Armoracia rusticana.*

TABLE 1—CLASS II EXEMPT ALLERGENS UNDER § 866.5750—RADIOALLERGOSORBENT (RAST) IMMUNOLOGICAL TEST SYSTEMS—Continued

Allergen code	Allergen product	Source (taxonomical name)
k226	Ascorbate oxidase (Cuc p ascorbate oxidase)	*Cucurbita pepo.*
k301	Flour dust	*Triticum* spp.
k501	Savinase customer specific	Proprietary knowledge of customer.
k502	Lipolase customer specific	Proprietary knowledge of customer.
k503	Termamyl customer specific	Proprietary knowledge of customer.
k504	Clazinase customer specific	Proprietary knowledge of customer.

■ 66. In § 866.5910, revise paragraph (b) to read as follows:

§ 866.5910 Quality control material for cystic fibrosis nucleic acid assays.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 866.9. The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Quality Control Material for Cystic Fibrosis Nucleic Acid Assays.'' See § 866.1(e) for the availability of this guidance document.

PART 868—ANESTHESIOLOGY DEVICES

■ 67. The authority citation for part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 68. In § 868.1040, revise paragraph (b) to read as follows:

§ 868.1040 Powered algesimeter.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9.

■ 69. In § 868.2385, revise paragraph (b) to read as follows:

§ 868.2385 Nitrogen dioxide analyzer.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a standalone nitrogen dioxide analyzer and not those that are components of nitric oxide delivery systems intended to monitor nitrogen dioxide levels during inhaled nitric oxide therapy, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9. The special control is FDA's ''Guidance Document for Premarket Notification Submissions for Nitric Oxide Administration Apparatus, Nitric Oxide Analyzer, and Nitrogen Dioxide Analyzer.'' See § 868.1(e) for the availability of this guidance document.

■ 70. In § 868.2500, revise paragraph (b) to read as follows:

§ 868.2500 Cutaneous oxygen (PcO2) monitor.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9. The special control is FDA's ''Class II Special Controls Guidance Document: Cutaneous Carbon Dioxide (PcCO2) and Oxygen (PcO2) Monitors; Guidance for Industry and FDA.'' See § 868.1(e) for the availability of this guidance document.

■ 71. In § 868.2550, revise paragraph (b) to read as follows:

§ 868.2550 Pneumotachometer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9.

■ 72. In § 868.5180, revise paragraph (b) to read as follows:

§ 868.5180 Rocking bed.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9.

■ 73. In § 868.6250, revise paragraph (b) to read as follows:

§ 868.6250 Portable air compressor.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 868.9.

PART 870—CARDIOVASCULAR DEVICES

■ 74. The authority citation for part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 75. In § 870.1330, revise paragraph (b) to read as follows:

§ 870.1330 Catheter guide wire.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a torque device that is manually operated, non-patient contacting, and intended to manipulate non-cerebral vascular guide wires, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 76. In § 870.1390, revise paragraph (b) to read as follows:

§ 870.1390 Trocar.

* * * * *

(b) *Classification.* Class II (special controls). Except for trocars that are reprocessed for multiple use, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 77. In § 870.1650, revise paragraph (b) to read as follows:

§ 870.1650 Angiographic injector and syringe.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a non-patient contacting balloon inflation syringe intended only to inflate/deflate balloon catheters and monitor pressure within the balloon, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 78. In § 870.1875, revise paragraph (b)(2) to read as follows:

§ 870.1875 Stethoscope.

* * * * *

(b) * * *

(2) *Classification.* Class II (special controls). The device, when it is a lung sound monitor, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 79. In § 870.2675, revise paragraph (b) to read as follows:

§ 870.2675 Oscillometer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 80. In § 870.2770, revise paragraph (b) to read as follows:

§ 870.2770 Impedance plethysmograph.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a body composition analyzer which is not intended to diagnose or treat any medical condition, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 81. In § 870.4280, revise paragraph (b) to read as follows:

§ 870.4280 Cardiopulmonary prebypass filter.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 82. In § 870.4290, revise paragraph (b) to read as follows:

§ 870.4290 Cardiopulmonary bypass adaptor, stopcock, manifold, or fitting.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 83. In § 870.4340, revise paragraph (b) to read as follows:

§ 870.4340 Cardiopulmonary bypass level sensing monitor and/or control.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 84. In § 870.4400, revise paragraph (b) to read as follows:

§ 870.4400 Cardiopulmonary bypass blood reservoir.

* * * * *

(b) *Classification.* Class II (special controls), except that a reservoir that contains a defoamer or filter is classified into the same class as the defoamer or filter. The device, when it is a cardiopulmonary bypass blood reservoir that does not contain defoamers or blood filters, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 85. In § 870.4420, revise paragraph (b) to read as follows:

§ 870.4420 Cardiopulmonary bypass cardiotomy return sucker.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

■ 86. In § 870.4430, revise paragraph (b) to read as follows:

§ 870.4430 Cardiopulmonary bypass intracardiac suction control.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 870.9.

PART 872—DENTAL DEVICES

■ 87. The authority citation for part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 88. In § 872.1720, revise paragraph (b) to read as follows:

§ 872.1720 Pulp tester.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 89. In § 872.3260, revise paragraph (b) to read as follows:

§ 872.3260 Cavity varnish.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an external cleaning solution, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 90. In § 872.3300, revise paragraph (b) to read as follows:

§ 872.3300 Hydrophilic resin coating for dentures.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 91. In § 872.3540, revise paragraph (b)(2) introductory text to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) * * *

(2) Class II (special controls) if the OTC denture cushion or pad is made of a material other than wax-impregnated cotton cloth or if the intended use of the device differs from that described in paragraph (b)(1) of this section. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9. The special controls for this device are FDA's:

* * * * *

■ 92. In § 872.3560, revise paragraph (b) introductory text to read as follows:

§ 872.3560 OTC denture reliner.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9. The special controls for this device are FDA's:

* * * * *

■ 93. In § 872.3590, revise paragraph (b) to read as follows:

§ 872.3590 Preformed plastic denture tooth.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 94. In § 872.3600, revise paragraph (b) introductory text to read as follows:

§ 872.3600 Partially fabricated denture kit.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9. The special controls for this device are FDA's:

* * * * *

■ 95. In § 872.3890, revise paragraph (b) to read as follows:

§ 872.3890 Endodontic stabilizing splint.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 96. In § 872.5550, revise paragraph (b)(2) to read as follows:

§ 872.5550 Teething ring.

* * * * *

(b) * * *

(2) Class II (special controls) if the teething ring contains a fluid, such as water. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

■ 97. In § 872.6770, revise paragraph (b) to read as follows:

§ 872.6770 Cartridge syringe.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

PART 874—EAR, NOSE, AND THROAT DEVICES

■ 98. The authority citation for part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 99. In § 874.1090, revise paragraph (b) to read as follows:

§ 874.1090 Auditory impedance tester.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a tympanometer or auditory impedance tester that complies with FDA-recognized consensus standard ANSI S3.39, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 100. In § 874.1120, revise paragraph (b) to read as follows:

§ 874.1120 Electronic noise generator for audiometric testing.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 101. In § 874.1325, revise paragraph (b) to read as follows:

§ 874.1325 Electroglottograph.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 102. In § 874.3310, revise paragraph (b) to read as follows:

§ 874.3310 Hearing aid calibrator and analysis system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 103. In § 874.3320, revise paragraph (b) to read as follows:

§ 874.3320 Group hearing aid or group auditory trainer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 104. In § 874.3330, revise paragraph (b) to read as follows:

§ 874.3330 Master hearing aid.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 105. In § 874.3430, revise paragraph (b) to read as follows:

§ 874.3430 Middle ear mold.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

■ 106. In § 874.3730, revise paragraph (b) to read as follows:

§ 874.3730 Laryngeal prosthesis (Taub design).

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a voice amplification device, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 874.9.

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

■ 107. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 108. In § 876.1500, revise paragraph (b)(1) to read as follows:

§ 876.1500 Endoscope and accessories.

* * * * *

(b) * * *

(1) Class II (special controls). The device, when it is an endoscope disinfectant basin, which consists solely of a container that holds disinfectant and endoscopes and accessories; an endoscopic magnetic retriever intended for single use; sterile scissors for cystoscope intended for single use; a disposable, non-powered endoscopic grasping/cutting instrument intended for single use; a diagnostic incandescent light source; a fiberoptic photographic light source; a routine fiberoptic light source; an endoscopic sponge carrier; a xenon arc endoscope light source; an endoscope transformer; an LED light source; or a gastroenterology-urology endoscopic guidewire, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

* * * * *

■ 109. In § 876.4020, revise paragraph (b) to read as follows:

§ 876.4020 Fiberoptic light ureteral catheter.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 110. In § 876.4270, revise paragraph (b) to read as follows:

§ 876.4270 Colostomy rod.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 111. In § 876.4400, revise paragraph (b) to read as follows:

§ 876.4400 Hemorrhoidal ligator.

* * * * *

(b) *Classification.* Class II (special controls). Except for a hemostatic metal clip intended for use in the gastrointestinal tract, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 112. In § 876.4500, revise paragraph (b) to read as follows:

§ 876.4500 Mechanical lithotriptor.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a biliary mechanical lithotripter, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 113. In § 876.4770, revise paragraph (b) to read as follows:

§ 876.4770 Urethrotome.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 114. In § 876.5010, revise paragraph (b) to read as follows:

§ 876.5010 Biliary catheter and accessories.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a bile collecting bag or a surgical biliary catheter that does not include a balloon component, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 115. In § 876.5025, revise paragraph (b) introductory text to read as follows:

§ 876.5025 Vibrator for climax control of premature ejaculation.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9. The special controls for this device are:

* * * * *

■ 116. In § 876.5160, revise the section heading and paragraph (b) to read as follows:

§ 876.5160 Urological clamp.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for internal use, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 117. In § 876.5365, revise paragraph (b) to read as follows:

§ 876.5365 Esophageal dilator.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 118. In § 876.5520, revise paragraph (b)(1) to read as follows:

§ 876.5520 Urethral dilator.

* * * * *

(b) * * *

(1) Class II (special controls). Except when it is a mechanical urethral dilator, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

* * * * *

■ 119. In § 876.5630, revise paragraph (b) to read as follows:

§ 876.5630 Peritoneal dialysis system and accessories.

* * * * *

(b) *Classification.* Class II (special controls). The following accessories are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9: A catheter finger grip that is non-patient contacting and intended for single use with a peritoneal catheter; a continuous ambulatory peritoneal dialysis (CAPD) belt; and a catheter stand that does not include weigh scales.

■ 120. In § 876.5665, revise paragraph (b) to read as follows:

§ 876.5665 Water purification system for hemodialysis.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a water purification subsystem disinfectant, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 121. In § 876.5895, revise paragraph (b) to read as follows:

§ 876.5895 Ostomy irrigator.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

■ 122. In § 876.5980, revise paragraph (b)(1) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) * * *

(1) Class II (special controls). The barium enema retention catheter and tip with or without a bag that is a gastrointestinal tube and accessory or a gastronomy tube holder accessory is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

* * * * *

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 123. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 124. In § 878.4370, revise paragraph (b) to read as follows:

§ 878.4370 Surgical drape and drape accessories.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an ear, nose, and throat surgical drape, a latex sheet drape with self-retaining finger cot, a disposable urological drape, a Kelly pad, an ophthalmic patient drape, an ophthalmic microscope drape, an internal drape retention ring (wound protector), or a surgical drape that does not include an antimicrobial agent, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

■ 125. In § 878.4495, revise paragraph (b) to read as follows:

§ 878.4495 Stainless steel suture.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a steel monofilament suture that is uncoated and does not incorporate barbs, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9. The special control for this device is FDA's ''Class II Special Controls Guidance Document: Surgical Sutures; Guidance for Industry and FDA.'' See § 878.1(e) for the availability of this guidance document.

■ 126. In § 878.4580, revise paragraph (b) to read as follows:

§ 878.4580 Surgical lamp.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an operating room lamp, a surgical instrument light, a surgical floor standing light, an endoscopic surgical light, a surgical light connector, a ceiling mounted surgical light, a surgical light carrier, surgical light accessories, a surgical lamp, a remote illuminator, or an incandescent surgical lamp, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

■ 127. In § 878.5070, revise paragraph (b) to read as follows:

§ 878.5070 Air-handling apparatus for a surgical operating room.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an air handling bench apparatus, an air handling room apparatus, or an air handling enclosure apparatus, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

■ 128. The authority citation for part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 129. In § 880.5580, revise paragraph (b) introductory text to read as follows:

§ 880.5580 Acupuncture needle.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an acupuncture point locator or a single use acupuncture needle, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9. Acupuncture needles must comply with the following special controls:

* * * * *

■ 130. In § 880.5680, revise paragraph (b) to read as follows:

§ 880.5680 Pediatric position holder.

* * * * *

(b) *Classification.* Class I (general controls). Except when the device is an infant positioner for prescription use in highly monitored settings or an infant sleep position holder, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9. The device is exempt from the good manufacturing practice regulation in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

■ 131. In § 880.5780, revise paragraph (a)(2) to read as follows:

§ 880.5780 Medical support stocking.

(a) * * *

(2) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

* * * * *

■ 132. In § 880.6250, revise paragraph (b) to read as follows:

§ 880.6250 Non-powdered patient examination glove.

* * * * *

(b) *Classification.* Class I (general controls). The device, when it is a finger cot, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

■ 133. In § 880.6375, revise paragraph (b) to read as follows:

§ 880.6375 Patient lubricant.

* * * * *

(b) *Classification.* Class I (general controls). Except when the device is a vaginal patient lubricant or an oral lubricant, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

■ 134. In § 880.6760, revise paragraph (b) to read as follows:

§ 880.6760 Protective restraint.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

PART 882—NEUROLOGICAL DEVICES

■ 135. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 136. In § 882.1020, revise paragraph (b) to read as follows:

§ 882.1020 Rigidity analyzer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 137. In § 882.1030, revise paragraph (b) to read as follows:

§ 882.1030 Ataxiagraph.

* * * * *

(b) *Classification.* Class I (general controls). Except when the device is intended to provide an interpretation or a clinical implication of the measurement, it is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 138. In § 882.1470, revise paragraph (b) introductory text to read as follows:

§ 882.1470 Computerized cognitive assessment aid.

* * * * *

(b) *Classification.* Class II (special controls). Except when the computerized cognitive assessment aid is intended for diagnostic assessment of specific diseases or conditions and relies on inputs from visual cues, auditory cues, and/or functional use of the hand, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9. The special control(s) for this device are:

* * * * *

■ 139. In § 882.1540, revise paragraph (b) to read as follows:

§ 882.1540 Galvanic skin response measurement device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 140. In § 882.1560, revise paragraph (b) to read as follows:

§ 882.1560 Skin potential measurement device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 141. In § 882.1855, revise paragraph (b) to read as follows:

§ 882.1855 Electroencephalogram (EEG) telemetry system.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 142. In § 882.4060, revise paragraph (b) to read as follows:

§ 882.4060 Ventricular cannula.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 143. In § 882.4545, revise paragraph (b) to read as follows:

§ 882.4545 Shunt system implantation instrument.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9.

■ 144. In § 882.5895, revise paragraph (b) introductory text to read as follows:

§ 882.5895 Vibratory counter-stimulation device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 882.9. The special controls for this device are:

* * * * *

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 145. The authority citation for part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 146. In § 884.1630, revise paragraph (b) to read as follows:

§ 884.1630 Colposcope.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a standard colposcope (or colpomicroscope) that uses only a white light source, does not use filters other than a green filter, does not include image analysis software, and is not smartphone-based, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 147. In § 884.2990, revise paragraph (b) to read as follows:

§ 884.2990 Breast lesion documentation system.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a breast examination recording sheet, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9. The special control is FDA's guidance entitled ''Class II Special Controls Guidance Document: Breast Lesion Documentation System.'' See § 884.1(e) for the availability of this guidance document.

■ 148. In § 884.3200, revise paragraph (b) to read as follows:

§ 884.3200 Cervical drain.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 149. In § 884.4400, revise paragraph (b) to read as follows:

§ 884.4400 Obstetric forceps.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 150. In § 884.4530, revise paragraph (b)(1) to read as follows:

§ 884.4530 Obstetric-gynecologic specialized manual instrument.

* * * * *

(b) * * *

(1) Class II (special controls). The device, when it is an umbilical clamp with or without a cutter, a uterine tenaculum which is sterile and does not use suction and is intended for single use, a nonmetal vaginal speculum, or a fiberoptic nonmetal vaginal speculum, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

* * * * *

■ 151. In § 884.4900, revise paragraph (b) to read as follows:

§ 884.4900 Obstetric table and accessories.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 152. In § 884.5200, revise paragraph (b) introductory text to read as follows:

§ 884.5200 Hemorrhoid prevention pressure wedge.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9. The special controls for this device are:

* * * * *

■ 153. In § 884.5390, revise paragraph (b) to read as follows:

§ 884.5390 Perineal heater.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 154. In § 884.5400, revise paragraph (b) to read as follows:

§ 884.5400 Menstrual cup.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 155. In § 884.5425, revise paragraph (b)(2) to read as follows:

§ 884.5425 Scented or scented deodorized menstrual pad.

* * * * *

(b) * * *

(2) Class II (special controls) for scented or scented deodorized menstrual pads made of materials not described in paragraph (b)(1). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 156. In § 884.5435, revise paragraph (b) to read as follows:

§ 884.5435 Unscented menstrual pad.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9 only when the device is made of common cellulosic and synthetic material with an established safety profile.

■ 157. In § 884.6120, revise paragraph (b) to read as follows:

§ 884.6120 Assisted reproduction accessories.

* * * * *

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing). The device, when it is a simple embryo incubator with only temperature, gas, and humidity control; a syringe pump; a collection tube warmer; a dish/plate/microscope stage warmer; or a controlled-rate cryopreservation freezer, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 158. In § 884.6130, revise paragraph (b) to read as follows:

§ 884.6130 Assisted reproduction microtools.

* * * * *

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, and clinical testing). The device, when the assisted reproduction microtools (pipettes) are manufactured from glass, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 159. In § 884.6150, revise paragraph (b) to read as follows:

§ 884.6150 Assisted reproduction micromanipulators and microinjectors.

* * * * *

(b) *Classification.* Class II (special controls) (design specifications, labeling requirements, and clinical testing). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

■ 160. In § 884.6160, revise paragraph (b) to read as follows:

§ 884.6160 Assisted reproduction labware.

* * * * *

(b) *Classification.* Class II (special controls) (mouse embryo assay information, endotoxin testing, sterilization validation, design specifications, labeling requirements, and clinical testing). The device, when

it is a dish or plate intended for general assisted reproduction technology procedures, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 884.9.

PART 886—OPHTHALMIC DEVICES

■ 161. The authority citation for part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 162. In § 886.1120, revise paragraph (b) to read as follows:

§ 886.1120 Ophthalmic camera.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a photorefractor or a general-use ophthalmic camera, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 163. In § 886.1250, revise paragraph (b) to read as follows:

§ 886.1250 Euthyscope.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the battery-powered device. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

(2) Class II (special controls) for the AC-powered device. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 164. In § 886.1570, revise paragraph (b) to read as follows:

§ 886.1570 Ophthalmoscope.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an AC-powered opthalmoscope, a battery-powered opthalmoscope, or a hand-held ophthalmoscope replacement battery, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 165. In § 886.1780, revise paragraph (b)(1) to read as follows:

§ 886.1780 Retinoscope.

* * * * *

(b) * * *

(1) Class II (special controls) for the AC-powered device. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

* * * * *

■ 166. In § 886.1850, revise paragraph (b) to read as follows:

§ 886.1850 AC-powered slitlamp biomicroscope.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is intended only for the visual examination of the anterior segment of the eye, is classified as Group 1 per FDA-recognized consensus standard ANSI Z80.36, does not provide any quantitative output, and is not intended for screening or automated diagnostic indications, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 167. In § 886.1945, revise paragraph (b) to read as follows:

§ 886.1945 Transilluminator.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the battery-powered device. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

(2) Class II (special controls) for the AC-powered device. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 168. In § 886.3320, revise paragraph (b) to read as follows:

§ 886.3320 Eye sphere implant.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an ocular peg which is supplied sterile only, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 169. In § 886.4070, revise paragraph (b) to read as follows:

§ 886.4070 Powered corneal burr.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 170. In § 886.4150, revise paragraph (b) to read as follows:

§ 886.4150 Vitreous aspiration and cutting instrument.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is phacofragmentation unit replacement tubing, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 171. In § 886.4250, revise paragraph (b) to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the battery-powered device. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

(2) Class II (special controls) for the AC-powered device. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 172. In § 886.4335, revise paragraph (b) to read as follows:

§ 886.4335 Operating headlamp.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the battery-powered device. The battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

(2) Class II (special controls) for the AC-powered device. The AC-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 173. In § 886.4400, revise paragraph (b) to read as follows:

§ 886.4400 Electronic metal locator.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 174. In § 886.4440, revise paragraph (b) to read as follows:

§ 886.4440 AC-powered magnet.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

■ 175. In § 886.4790, revise paragraph (b) to read as follows:

§ 886.4790 Ophthalmic sponge.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9.

PART 888—ORTHOPEDIC DEVICES

■ 176. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 177. In § 888.1240, revise paragraph (b) to read as follows:

§ 888.1240 AC-powered dynamometer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 888.9.

■ 178. In § 888.4580, revise paragraph (b) to read as follows:

§ 888.4580 Sonic surgical instrument and accessories/attachments.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 888.9.

PART 890—PHYSICAL MEDICINE DEVICES

■ 179. The authority citation for part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 180. In § 890.1450, revise paragraph (b) to read as follows:

§ 890.1450 Powered reflex hammer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 181. In § 890.5100, revise paragraph (b) to read as follows:

§ 890.5100 Immersion hydrobath.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a hydromassage bath or a powered sitz bath, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 182. In § 890.5110, revise paragraph (b) to read as follows:

§ 890.5110 Paraffin bath.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 183. In § 890.5250, revise paragraph (b) to read as follows:

§ 890.5250 Moist steam cabinet.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 184. In § 890.5360, revise paragraph (b) to read as follows:

§ 890.5360 Measuring exercise equipment.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is a measuring exerciser, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 185. In § 890.5500, revise paragraph (b) to read as follows:

§ 890.5500 Infrared lamp.

* * * * *

(b) *Classification.* Class II (special controls). The device, when it is an infrared therapeutic heating lamp, is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

■ 186. In § 890.5575, revise paragraph (b) to read as follows:

§ 890.5575 Powered external limb overload warning device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 890.9.

PART 892—RADIOLOGY DEVICES

■ 187. The authority citation for part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 188. In § 892.1000, revise paragraph (b) to read as follows:

§ 892.1000 Magnetic resonance diagnostic device.

* * * * *

(b) *Classification.* Class II (special controls). A magnetic resonance imaging disposable kit intended for use with a magnetic resonance diagnostic device only is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 189. In § 892.1560, revise paragraph (b) to read as follows:

§ 892.1560 Ultrasonic pulsed echo imaging system.

* * * * *

(b) *Classification.* Class II (special controls). A biopsy needle guide kit intended for use with an ultrasonic pulsed echo imaging system only is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 190. In § 892.1610, revise paragraph (b) to read as follows:

§ 892.1610 Diagnostic x-ray beam-limiting device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 191. In § 892.1650, revise paragraph (b) to read as follows:

§ 892.1650 Image-intensified fluoroscopic x-ray system.

* * * * *

(b) *Classification.* Class II (special controls). An anthrogram tray or radiology dental tray intended for use with an image-intensified fluoroscopic x-ray system only is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9. In addition, when intended as an accessory to the device described in paragraph (a) of this section, the fluoroscopic compression device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 192. In § 892.1670, revise paragraph (b) to read as follows:

§ 892.1670 Spot-film device.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 193. In § 892.1680, revise paragraph (b) to read as follows:

§ 892.1680 Stationary x-ray system.

* * * * *

(b) *Classification.* Class II (special controls). A radiographic contrast tray or radiology diagnostic kit intended for use with a stationary x-ray system only is exempt from the premarket notification procedures in subpart E of

part 807 of this chapter subject to the limitations in § 892.9.

■ 194. In § 892.1730, revise paragraph (b) to read as follows:

§ 892.1730 Photofluorographic x-ray system.

* * * * *

(b) *Classification.* Class II (special controls). A discography kit intended for use with a photofluorographic x-ray system only is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 195. In § 892.1820, revise paragraph (b) to read as follows:

§ 892.1820 Pneumoencephalographic chair.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 196. In § 892.1850, revise paragraph (b) to read as follows:

§ 892.1850 Radiographic film cassette.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 197. In § 892.1860, revise paragraph (b) to read as follows:

§ 892.1860 Radiographic film/cassette changer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 198. In § 892.1870, revise paragraph (b) to read as follows:

§ 892.1870 Radiographic film/cassette changer programmer.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 199. In § 892.1900, revise paragraph (b) to read as follows:

§ 892.1900 Automatic radiographic film processor.

* * * * *

(b) *Classification.* Class II (special controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 200. In § 892.2030, revise paragraph (b) to read as follows:

§ 892.2030 Medical image digitizer.

* * * * *

(b) *Classification.* Class II (special controls; voluntary standards—Digital Imaging and Communications in Medicine (DICOM) Std., Joint Photographic Experts Group (JPEG) Std.). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 201. In § 892.2040, revise paragraph (b) to read as follows:

§ 892.2040 Medical image hardcopy device.

* * * * *

(b) *Classification.* Class II (special controls; voluntary standards—Digital Imaging and Communications in Medicine (DICOM) Std., Joint Photographic Experts Group (JPEG) Std., Society of Motion Picture and Television Engineers (SMPTE) Test Pattern). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

■ 202. In § 892.5730, revise paragraph (b) to read as follows:

§ 892.5730 Radionuclide brachytherapy source.

* * * * *

(b) *Classification.* Class II (special controls). A prostate seeding kit intended for use with a radionuclide brachytherapy source only is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 892.9.

Dated: December 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27394 Filed 12–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 225

[Docket ID: DOD–2019–OS–0131]

RIN 0790–AK92

Commissary Credit and Debit Card User Fee

AGENCY: Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This rule implements Section 621 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 expanding patronage for commissary, exchange, and revenue-generating morale, welfare, and recreation (MWR) facilities. As part of DOD's implementation the Department is required to collect a user fee when these new populations utilize a credit or debit card that creates a cost to the Department of the Treasury for processing these transactions. As it related to this Section, such costs are only generated by credit or debit card transactions at Defense Commissary Agency (DeCA) facilities.

DATES: *Effective date:* This interim final rule is effective on December 30, 2019.

Comment date: Comments will be received by February 28, 2020.

Applicability date: Per the deadline in the statute and as implemented in this rule, these user fees go into effect on January 1, 2020.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN. The general policy for comments and other submissions from members of the public is to make these submissions available at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jane Westbay, (571) 372–6579, *Jane.A.Westbay.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Summary of New and Amendatory Regulatory Provisions and Their Impact

This rule implements Section 621 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Purple Heart and Disabled Veterans Equal Access Act of 2018), codified at Section 1065 of Title 10, United States Code. Section 621 expands patronage for commissary, exchange, and revenue-generating morale, welfare, and recreation (MWR) facilities. By January 1, 2020, the Department of Defense is directed to:

- Extend commissary and MWR facility privileges, including exchange, military MWR recreation lodging, and other revenue-generating MWR facilities, on the same basis as a member of the armed forces entitled to retired or retainer pay. Section 621 applies to veterans who
- were awarded the Purple Heart.
- are Medal of Honor recipients.
- are former prisoners of war.
- have a Department of Veterans Affairs-documented service-connected disability rating.
- Impose a user fee on individuals who are eligible solely under the statute to cover any increase in expenses borne by the Department of Treasury (Treasury) on behalf of commissary stores for processing credit or debit cards for payment.
- Deposit commissary credit/debit card user fees collected in the General Fund of the Treasury.
- Provide briefing to the Committees on Armed Services of the Senate and House of Representatives on the plan to implement Section 1065 of Title 10, no later than October 1, 2019.

Section 621 also applies to caregivers and family caregivers for veterans as defined in Section 1720G of Title 38, U.S.C.

Background and Legal Basis for This Rule

This rule implements a patronage expansion pursuant to 10 U.S.C. 1065 as modified by Section 621 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. This Section's provisions apply when using a credit or debit card to pay for commissary purchases. As card network rules place limitations on the user fees that can be set for credit cards and debit cards, the Department has elected to set user fees as a flat rate at or below the current average cost to the Treasury to process credit cards and debit cards. Initially, and in consultation with the card processing operations of the Treasury, the initial rate established by the Department will be 1.9 percent of an individual's total sales amount for the use of a credit card, and 0.5 percent of an individual's total sales amount for the use of a debit card. On a periodic basis, the Department plans to review with Treasury actual costs incurred by the Treasury on credit card and debit card use by individuals who are eligible solely under the statute and adjust corresponding user fees as necessary. User fees will not be imposed on the use of electronic benefit transfer (EBT) cards like the Supplemental Nutrition Assistance Program or the Women, Infant, and Children as the rate for processing these cards is negligible (0.01 percent) and does not merit imposition of a user fee under the requirements of this legislation. This user fee will also not apply to cash, personal check, or MILITARY STAR card transactions as these forms of payment do not contribute to the expenses of the Treasury for processing card transactions.

In addition to this rule, a corresponding internal policy, ''Expansion of Patronage for Certain Veterans and Certain Caregivers for Veterans,'' will be available at: *https://www.esd.whs.mil/DD/*.

Expected Impact of the Interim Rule

As part of the implementation plan for program expansion, DoD performed an impact assessment to identify potential high volume locations based on veteran density and general cost of living. As part of the Department's assessment, DoD gathered veteran data from VA National Center for Veterans Analysis, the VA Office of the Actuary, the DoD Office of the Actuary, U.S. Census Bureau, Defense Manpower Data Center, Defense Commissary Agency, and Military Service exchanges. The Department found a higher impact at locations with a high veterans density (*e.g.,* San Antonio, Tampa, San Diego) as well as a higher impact at locations with a high cost of living (*e.g.,* Hawaii, Alaska, Puerto Rico, Guam, San Francisco Bay Area, New York City). As such, these locations are informed and preparing for the new volume of usage.

The Department found many conditions impact patronage including the following factors.

- Time, distance, and effort to access installations.
- Time and distance from VA medical facilities (farther = less likely to obtain a Veteran Health Identification Card that would facilitate installation and shopping access).
- Personal mobility/transportation.
- Personal financial circumstances.
- Local economic conditions.
- Off-installation and online shopping competition.
- Established shopping habits and brand loyalty.
- Eligibility of the primary shopper for the household.

Based on DoD's current user patronage, the proximity of these new users to military installations, and established shopping patterns, the Department expects only 30 percent of the 4.1 million newly eligible users (1.23 million actual users = 4.1 million × 30%) to shop at DoD commissary stores.

In line with supermarket industry statistics available at *https://www.creditcards.com/credit-card-news/payment-method-statistics-1276.php,* the Department expects 85 percent of these new shoppers (1,045,500 shoppers = 1.23 million × 85%) to pay for their purchases with credit or debit cards, causing an increase in processing costs to the Treasury. Of the 1.23 million expected users, 23 percent are expected to pay with credit cards (282,900 credit card users = 1.23 million × 23%) and 62 percent are expected to pay with debit cards (762,600 debit card users = 1.23 million × 62%). Card network rules prevent charging fees in amounts greater than the average cost to process transactions, so the Department, in conjunction with the Treasury, analyzed current processing costs for commissary credit and debit card transactions to determine the initial fees (see Table 1—DECA Payment Card Processing Summary). Rather than charging a different rate for every brand of credit or debit card used, the Department, in conjunction with the Treasury, opted to set one rate for credit and signature debit cards (which are processed like credit cards) and a different fee for personal identification number (PIN) debit cards. If the Department had opted to charge only one fee, then the lowest average card rate that could be used would have been the rate for PIN debit cards (0.51 percent), which would not have recovered a significant portion of the Treasury's processing costs. The credit card fee was set at the lowest average rate of all of the credit card brands (1.9 percent), and the debit card fee was set just below the average debit card rate (0.5 percent). On an average basket of groceries from the commissary ($66), credit card users would pay $1.25 ($66 × 1.9%) and debit card users would pay $0.33 ($66 × 0.5%). If each new user shopped four times per month, credit card users would pay approximately $60 annually in fees ($1.25 × 4 × 12) and debit card users would pay approximately $15.84 annually in fees ($0.33 × 4 × 12). Total amounts collected for the credit and debit card user fee would be $29,053,584 (($60 × 282,900) + ($15.84 × 762,600)).

Even with this user fee, these newly-eligible commissary shoppers will enjoy an average overall grocery basket savings of over 20 percent compared to commercial grocery stores. Commissary stores are required to deliver an average worldwide savings of 23.7 percent over commercial grocery stores, so imposing a 0.5 to 1.9 percent user fee on commercial debit and credit card

purchases still nets a 23.2 to 22.8 percent overall savings to the consumer.

The Department of the Treasury, Bureau of the Fiscal Service administers the Card Acquiring Service (CAS) and evaluated DeCA's FY2018 payment card usage (the most recent annual period at the time of the request) as the best available proxy for projecting card processing costs that would be incurred by the Treasury for the new patron groups. The following data elements for DeCA FY2018 were captured: Transaction count and sales volumes by all card types (*i.e.,* credit, debit, EBT/WIC); volume breakout by card brand/network within credit volumes (*i.e.,* American Express, Discover, MasterCard, and Visa); and average per card type/network, sales per transaction ('ticket value''), cost per transaction, and cost per $1 in sales. These data elements for DeCA's FY2018 payment card activity are disclosed in the table below. For each card type/network, the data was used to calculate an ''effective rate,'' which approximates the related processing costs borne by the Treasury.

TABLE 1—DECA PAYMENT CARD PROCESSING SUMMARY FY2018

Card type/network	% of net sales	% of net sales amount	Effective rate	Avg . ticket value	Avg. cost per tran	Avg. cost per dollar
EBT	0.96	1.25	0.01	$85	$0.01	$0.0001
PIN	56.09	55.15	0.51	65	0.33	0.0051
Amex	4.63	4.90	1.90	70	1.44	0.0207
Discover	1.30	1.51	2.40	76	1.82	0.0240
Visa	31.97	31.74	1.91	65	1.24	0.0191
MasterCard	5.05	5.46	1.93	71	1.37	0.0193
	100	100	1.13	66	0.74	0.0113

Waiver of Proposed Rulemaking

DoD is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable, unnecessary, and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed.

The conclusion of a public notice and comment period before the rule is finalized would be impracticable because it would impede due and timely execution of DoD's function to provide patronage to these new groups. Since the NDAA was signed August 13, 2018, DOD and the Department of Treasury have worked in coordination on a number of actions necessary to implement the law. Before DoD could begin any rulemaking implementation, an impact assessment requiring data from VA, Commerce, and other agencies as well on ongoing discussions with the Department of the Treasury needed to be completed. This has left DoD with insufficient time to prepare and complete a full public notice and comment rulemaking proceeding and to timely complete a final rule before the statutory start date of January 1, 2020.

To the extent that an NPRM would furnish general public information for the intended new audiences, it is unnecessary in light of the extensive outreach already undertaken by DoD, which provided more specific and more detailed notice to these affected beneficiaries than an NPRM would provide. Outreach included identifying the eligible population; joint efforts with Departments of Veterans Affairs, Homeland Security (Coast Guard) and the Treasury; to communicate with potential new patrons about eligibility, access, and authorized facilities; and development of outreach content to include handouts, news releases, fact sheets, and blog and social media content.

In addition, it is unnecessary as it is a lost opportunity to expand patronage by the effective date of January 1, 2020. Missing this date would result in confusion to the affected population. Not collecting the fee from January 1st would lead to a shortage in reimbursement to the Treasury for the additional expense incurred for processing credit and debit card transactions made by these new users. DoD is required to collect this fee specifically to reimburse the Treasury for the additional expenses incurred for processing credit and debit cards used by this population. The Department has no way to collect the fee retroactively. If the Department does not begin collecting the fee on January 1, new patrons could only pay for their commissary purchases by cash, check, electronic benefit transfer (EBT) card, MILITARY STAR card, or other form of payment that does not cause a cost to the Treasury. This would be difficult for DoD to enforce as supermarket shopper behavior statistics available at *https://www.creditcards.com/credit-card-news/payment-method-statistics-1276.php* reveal that 85 percent of shoppers pay for grocery purchases with credit and debit cards. Imposing a cash or check-only policy for these new patron groups would create an unrealistic and unfair condition for these shoppers. This outcome would be contrary to the public interest.

For these reasons, DoD has determined that the public notice and participation that the APA ordinarily requires would, in this case, be impracticable, unnecessary, and contrary to the public interest and that good cause exists for waiving proposed rulemaking and delaying its solicitation of comments from the public until after it issues an interim final rule. DoD will consider those comments received upon its interim final rulemaking in a subsequent final rule.

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13556 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs''

This rule is not expected to be an E.O. 13771 action, because it is not significant under E.O. 12866.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The Department of Defense certifies that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This interim final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This interim final rule will not mandate any requirements for State, local, or tribal governments, nor will affect private sector costs.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that 32 CFR part 225 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 225

Commissary, Credit, Debit, User fee.

■ Accordingly 32 CFR Part 225 is added to read as follows:

PART 225—Commissary Credit and Debit Card User Fee

Sec.

225.1 Purpose.
225.2 Applicability.
225.3 Definitions.
225.4 Policy.
225.5 Responsibilities.
225.6 Procedures.

Authority: 10 U.S.C. 1065

§ 225.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for the implementation of patronage expansion pursuant to 10 U.S.C. 1065.

§ 225.2 Applicability.

This part applies to veterans who are Purple Heart recipients, veterans who are former prisoners of war, veterans who have a Department of Veterans Affairs-documented service-connected disability rating between 0–90 percent, and individuals approved and designated as the caregiver or family caregiver of an eligible veteran under a formalized Department of Veterans Affairs caregiver program (as of January 1, 2020, authorized caregivers are the primary family caregiver of an eligible veteran under the Program of Comprehensive Assistance for Family Caregivers).

§ 225.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Caregiver. Defined in 38 U.S.C. 1720G(d)

Family Caregiver. Defined in 38 U.S.C. 1720G(d)

Former POW. Defined in 38 U.S.C. 101

Service-connected. Defined in 38 U.S.C. 101

Veteran. Defined in 38 U.S.C. 101

§ 225.4 Policy.

In accordance with 10 U.S.C. 1065, the following new patron groups are authorized access to DoD commissary, exchange, and morale, welfare, and recreation (MWR) revenue generating activities on the same basis as a member of the Military Services entitled to retired or retainer pay, effective January 1, 2020:

(a) Veterans who were awarded the Purple Heart.

(b) Veterans who are former prisoners of war (POWs).

(c) Veterans classified by the Department of Veterans Affairs (VA) as having a service-connected disability rating below 100 percent.

(d) Caregivers or family caregivers for veterans under the VA caregiver program. These caregivers are only eligible for these privileges during their period of active enrollment as the caregiver or family caregiver for a veteran.

§ 225.5 Responsibilities.

DIRECTOR, DeCA. Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness through the Assistant Secretary of Defense for Manpower and Reserve Affairs, the Director, DeCA:

(a) Establishes processes and updates systems necessary to collect and deposit with U.S. Treasury, user fees related to commercial debit/credit card use in commissaries in accordance with section 225.6 of this part.

(b) Implements commissary credit/debit card user fee requirements.

§ 225.6 Procedures.

(a) *Commissary Credit/Debit Card User Fee.* (1) Only patrons of groups newly authorized privileges by this part must pay a user fee when using a credit or debit card to pay for commissary purchases to offset additional costs charged to the U.S. Treasury associated with credit or debit card use.

(2) The user fee will be set as a transaction-based flat rate, calculated within a range of the average annual rates of credit and debit card transaction costs incurred by the Department of Treasury on behalf of DeCA and in compliance with applicable card network rules. One rate will be set for credit and signature debit card transactions, which are processed as credit cards. Another rate will be set for personal identification number debit card transactions. These rates will be reviewed annually and adjustments may be made as necessary to meet the requirements of 10 U.S.C. 1065.

(3) Purchases made with electronic benefit transfer cards (*e.g.,* Women, Infants, and Children or Supplemental Nutrition Assistance Program) and the MILITARY STAR card are not subject to this credit/debit card user fee.

(4) No user fee reimbursement will be made on customer return of merchandise.

(5) All credit/debit card user fee amounts collected in commissary stores will be deposited in the General Fund of the Treasury.

(b) [Reserved]

Dated: December 20, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–28018 Filed 12–27–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0296]

RIN 1625–AA11

Regulated Navigation Area; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is proposing to establish a permanent regulated navigation area for certain waters of Lake Washington. The regulated navigation area is intended to protect personnel and vessels from potential hazards created by excessive vessel wake prior to and following high traffic Seafair events.

DATES: This rule is effective January 29, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0296 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6051, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard was notified by the Mercer Island Police Department of hazardous conditions associated with increased vessel and swimmer congestion after high traffic Seafair marine events, which can make routine navigation for persons and vessels unsafe. The Seafair event draws an extraordinary amount of boaters and persons to the waterway to observe several high traffic events, such as the Seafair Hydroplane Races and Seafair Air Shows. The wakes created by transiting vessels near the vicinity of vessels moored to the log boom during high traffic events pose a safety concern to vessels and swimmers in the area. Coast Guard action is needed to restrict vessel movement prior to and after Seafair events where significant marine traffic endanger the safety of swimmers and vessels proximate to the log boom.

In response, on May 28, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Regulated Navigation Area; Lake Washington, Seattle, WA 84 FR 24418. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this regulated navigation area. During the comment period that ended June 27, 2019, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Coast Guard Thirteenth District Commander has determined that there are potential hazards associated with Seafair activities, which usually occur on Lake Washington during the last week of July and the first two weeks of August. The purpose of this rule is to ensure safety of vessels and the navigable waters in the regulated navigation area prior to and after Seafair activities.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received no comments on our NPRM published May 28, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The regulated navigation area will cover all navigable waters within Lake Washington south of the Interstate 90 floating Bridge and north of a line between Bailey Peninsula and Mercer Island. The duration of the regulated navigation area is intended to protect personnel and vessels in these navigable waters from excessive wake associated with vessels before and after high traffic Seafair events. Vessels transiting the area will be required to create minimum wake, at speeds of 7 miles per hour or less, unless a higher minimum speed is necessary to maintain bare steerageway. Enforcement periods for this rule will occur daily prior to and immediately following Seafair events.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and time-of-day of the regulated navigation area. Vessel traffic will be able to transit through the regulated navigation area, and the regulation will only impact a small designated area of Lake Washington for less than four days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated navigation area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated navigation area may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area enforced annually for a total of less than 4 days that would restrict vessel speed. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1341 before the undesignated center heading ''Fourteenth Coast Guard District'' to read as follows:

§ 165. 1341 Regulated Navigation Area; Lake Washington, Seattle, WA.

(a) *Location.* The following area is a regulated navigation area: All waters of Lake Washington south of the Interstate 90 Floating West Bound Bridge and north of the points between Bailey Peninsula at 47°33′14.4″ N, 122°14′47.3″ W and Mercer Island at 47°33′24.5″ N, 122°13′52.5″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the regulated navigation zone.

(c) *Regulations.* All vessels and persons transiting the regulated navigation area described in paragraph (a) of this section must proceed at a speed which creates minimum wake, 7 miles per hour or less, unless a higher minimum speed is necessary to maintain bare steerageway.

(d) *Enforcement periods.* This section will be enforced annually immediately before and after Seafair events which usually occurs during the last week in July and the first two weeks of August. The event will be one week or less in duration and the specific dates and times of the enforcement periods will be published in a notice of enforcement in the **Federal Register**.

Dated: September 26, 2019.

A.J. Vogt,

RADM, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2019–27985 Filed 12–27–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0165; FRL–10002–05–Region 9]

Air Plan Approval; California; Yolo-Solano Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing action on a revision to the Yolo-Solano Air Quality Management District (YSAQMD or ''the District'') portion of the California State Implementation Plan (SIP) to approve a rule governing issuance of permits for stationary sources emitting fine particulate matter ($PM_{2.5}$) and $PM_{2.5}$ precursors, including review and permitting of major sources and major

modifications under part D of title I of the Clean Air Act (CAA or ''the Act''). Specifically, the approval pertains to YSAQMD Rule 3.25, ''Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources.''

DATES: This rule is effective on January 29, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2019–0165. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Margaret Waldon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3987 or by email at *waldon.margaret@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Proposed Action

On July 11, 2019 (84 FR 33030), the EPA proposed to fully approve the following rule that was submitted for incorporation in the YSAQMD portion of the California SIP.

TABLE 1 SUBMITTED RULE

Rule No.	Rule title	Amended	Submitted
3.25	Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources	05/15/19	06/04/19

We proposed approval of this rule because we determined that the rule meets the statutory requirements for SIP revisions as specified in section 110(l) of the CAA, as well as the substantive statutory and regulatory requirements found in CAA sections 110(a)(2), 172, 173, and 189(e), and 40 CFR 51.160–51.165.

II. Public Comments and EPA Responses

We received one (1) comment from the Center for Biological Diversity regarding our proposed approval of Rule 3.25 into the Yolo-Solano AQMD portion of the California SIP. The commenter stated that the definition of the term ''significant'' found in YSAQMD's Rule 3.25, section 212.3, is inconsistent with the significant emissions rate found in 40 CFR 51.165(a)(1)(x)(A). The commenter stated that section 212.3 incorrectly defines a significant emission rate for nitrogen dioxide (NO_2) rather than nitrogen oxides (NO_X). The commenter stated that by defining a significant emission rate for NO_2 instead of NO_X, the YSAQMD ignored the technical distinction under federal law and the broader class of regulated NO_X species. The commenter stated that the EPA should not approve Rule 3.25 until the YSAQMD corrects the discrepancy in section 212.3.

The EPA agrees with the commenter that Rule 3.25's definition of ''significant'' specifies an emission rate for NO_2, whereas the EPA's definition of ''significant'' at 40 CFR 51.165(a)(1)(x)(A) specifies an emission rate for NO_X. This discrepancy warrants careful consideration because Rule 3.25's definition of ''significant'' is part of the evaluation of whether a project will increase emissions of $PM_{2.5}$ and/or $PM_{2.5}$ precursors beyond specified thresholds, thereby triggering requirements applicable to ''major modifications,'' such as those for pollution controls and offsets. In considering the comment, we reviewed YSAQMD's SIP-approved permitting rules to determine whether there might be a mechanism other than Rule 3.25 that properly regulates increases of NO_X emissions resulting from physical or operational changes at a stationary source. We found that SIP-approved YSAQMD Rule 3.4, ''New Source Review,'' provides such a mechanism.

The EPA approved Rule 3.4, which implements permitting requirements for new and modified stationary sources, into the California SIP in 1997.[1] As part of its approval of Rule 3.4, the EPA determined that the rule meets all federal requirements for nonattainment New Source Review (NNSR) permitting.[2] Rule 3.4 contains requirements to evaluate emission increases of NO_X as a nonattainment pollutant and imposes NNSR requirements applicable to major modifications, such as requirements for pollution controls and offsets, that the EPA has determined meet federal requirements. Moreover, because YSAQMD's jurisdiction includes areas designated nonattainment for ozone as well as $PM_{2.5}$, YSAQMD uses Rule 3.4 to regulate NO_X (and volatile organic compounds) as an ozone precursor.[3] And, because Rule 3.4 contains the EPA's requirements for ozone nonattainment areas classified as severe, Rule 3.4 regulates NO_X as an ozone precursor at lower applicability thresholds and higher offset ratios than the EPA's requirements for NO_X as a $PM_{2.5}$ precursor that apply in $PM_{2.5}$ nonattainment areas classified as moderate (such as the $PM_{2.5}$ nonattainment area regulated by YSAQMD). In other words, Rule 3.4 regulates NO_X more stringently than the EPA's regulations or Rule 3.25 regulate NO_X as a $PM_{2.5}$ precursor. We provide additional explanation below regarding Rule 3.4's regulation of NO_X as a precursor to $PM_{2.5}$, consistent with federal requirements.

First, we note that Rule 3.4's definition of ''major stationary source'' specifies a threshold of 25 tons per year (tpy) for NO_X emissions, whereas the definitions of ''major stationary source'' in the EPA's NNSR regulations and Rule 3.25 specify a threshold of 100 tpy for $PM_{2.5}$ precursors such as NO_X.[4] Rule 3.4's lower threshold means that all

[1] The EPA approved Rule 3.4 into the California SIP on July 7, 1997. 62 FR 36214.

[2] Id. Requirements for a NNSR program include application of the lowest achievable emission rate (LAER) and providing offsets for emission increases.

[3] At the time of the EPA's action on Rule 3.4, areas within YSAQMD's jurisdiction were classified as severe nonattainment for the 1979 1-hour ozone NAAQS. Currently, these areas are classified as severe nonattainment for the 2008 8-hour ozone NAAQS and moderate nonattainment for the 2015 8-hour ozone NAAQS. 40 CFR 81.305.

[4] Compare the definition of ''major stationary source'' in Rule 3.4, section 222 (25 tpy NO_X), with the EPA's definition of ''major stationary source'' (100 tpy of NO_X for $PM_{2.5}$ nonattainment areas classified as moderate). 40 CFR 51.165(a)(1)(iv)(1). Rule 3.25's definition of ''major stationary source'' also specifies a threshold of 100 tpy. Rule 3.25, section 206.

modification projects at major stationary sources that would be required to be reviewed under the EPA's NNSR requirements for NO_X as a $PM_{2.5}$ precursor are in fact subject to review.

The EPA also compared Rule 3.4's definition of ''major modification'' with definitions in the EPA's regulations and Rule 3.25.[5] Rule 3.4's definition of ''major modification'' specifies a lower threshold for NO_X than the EPA's $PM_{2.5}$ NNSR regulations or Rule 3.25; specifically, Rule 3.4 sets an applicability threshold for NO_X at 25 tpy, whereas the EPA's regulations for NO_X as a $PM_{2.5}$ precursor and Rule 3.25's regulation of NO_2 set the applicability threshold at 40 tpy.[6] Therefore, Rule 3.4's lower threshold ensures that any modification that would result in a significant emission increase of NO_X will be subject to NNSR requirements (such as those for pollution controls and offsets) consistent with the EPA's NNSR requirements for NO_X as a $PM_{2.5}$ precursor and Rule 3.25.

In addition, the EPA compared offset requirements in Rule 3.4 with offset requirements in the EPA's regulations and Rule 3.25. Rule 3.4's required offset ratio for NO_X is 1:1.3, whereas the offset ratio required by the EPA's NNSR regulations for NO_X as a $PM_{2.5}$ precursor and Rule 3.25 is 1:1.[7] Rule 3.4's higher ratio means that Rule 3.4 requires more offsets for NO_X than the EPA's NNSR requirements for NO_X as a $PM_{2.5}$ precursor or Rule 3.25.

Accordingly, because the requirements for a NNSR program applicable to NO_X as a $PM_{2.5}$ precursor are already satisfied by SIP-approved Rule 3.4, the reference to NO_2 in Rule 3.25's definition of ''significant'' has no practical impact. We note that the implementation of Rule 3.4 in conjunction with Rule 3.25 should not present undue difficulty because YSAQMD's jurisdiction is classified as nonattainment for the 2008 and 2015 ozone NAAQS; therefore, projects at major stationary sources that increase NO_X emissions are already required to be evaluated under Rule 3.4 for reasons related to ozone nonattainment.[8] Finally, we note that, despite the overlap with Rule 3.4, Rule 3.25 is a necessary addition to the YSAQMD SIP because it regulates $PM_{2.5}$ and $PM_{2.5}$ precursors not regulated by Rule 3.4—specifically, sulfur dioxide and ammonia. We therefore find that finalization of our action as proposed is appropriate.

III. EPA Action

We received one (1) adverse comment regarding the proposed of Rule 3.25 into the YSAQMD portion of the California SIP. However, for the reasons set forth in our proposed action and above in Section II, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is approving Rule 3.25 ''Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources'' into the YSAQMD portion of the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the YSAQMD rule listed in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through *https://www.regulations.gov* and in hard copy at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

[5] The term ''major modification'' in Rule 3.25 includes the term ''significant emissions increase'' and therefore relates directly to the commenter's concern regarding Rule 3.25's definition of ''significant.''

[6] Compare the definition of ''major modification'' in Rule 3.4, section 221 (25 tpy threshold), with the EPA's definition of ''major modification'' (40 tpy of NO_X for $PM_{2.5}$ nonattainment areas). 40 CFR 51.165(a)(1)(x)(A). As noted by the commenter, Rule 3.25's definition of ''significant'' is 40 tpy of NO_2, which means that Rule 3.25's definition of ''major modification,'' which uses the term ''significant,'' also applies a threshold of 40 tpy for NO_2. Rule 3.25, sections 205 and 212.

[7] Compare Rule 3.4, section 303 (1:1.3 offset ratio), with the EPA's offset ratio of 1:1. 40 CFR 51.165(a)(9)(i). Rule 3.25 also requires an offset ratio of 1:1. Rule 3.25, section 302.

[8] Rule 3.4's applicability is not tied to the area's nonattainment status with respect to ozone. For example, if the ozone nonattainment area within YSAQMD's jurisdiction were redesignated to attainment for ozone but remained nonattainment for $PM_{2.5}$, Rule 3.4's NNSR requirements would remain applicable to NO_X as a $PM_{2.5}$ precursor.

of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 1, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(524) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(524) New additional materials for the following AQMD was submitted on June 4, 2019 by the Governor's designee.

(i) *Incorporation by reference.* (A) Yolo-Solano Air Quality Management District.

(*1*) Rule 3.25, ''Federal New Source Review for New and Modified Major $PM_{2.5}$ Sources,'' amended May 15, 2019.

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2019–27541 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–5530–N]

Medicare Program; Advanced Alternative Payment Model (APM) Incentive Payment Advisory for Clinicians—Request for Current Banking Information for Qualifying APM Participants

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Payment advisory.

SUMMARY: This advisory is to alert certain clinicians who are Qualifying APM participants (QPs) and eligible to receive an Advanced Alternative Payment Model (APM) Incentive Payment that CMS does not have the current banking information needed to disburse the payment. This advisory provides information to these clinicians on how to update their banking information to receive this payment.

DATES: This advisory is effective on December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Brittany LaCouture, (410) 786–0481.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare Quality Payment Program, an eligible clinician who participates in Advanced Alternative Payment Models (APMs) and meets the applicable payment amount or patient count thresholds for a performance year is a Qualifying APM Participant (QP) for that year. QPs earn a 5 percent lump sum APM Incentive Payment in the payment years 2019 through 2024 based on the QP Performance Period 2 years prior. The amount of the APM Incentive Payment is 5 percent of the payments for Part B covered professional services paid for the calendar year immediately preceding the payment year.

We began disbursing the 2019 APM Incentive Payment on September 26, 2019, and these disbursements are ongoing. The 2019 APM Incentive Payment is for eligible clinicians who were determined to be QPs based on their participation in Advanced APMs in the 2017 QP Performance Period.

II. Provisions of the Advisory

CMS is issuing this advisory to notify the QPs who are eligible for a 2019 APM Incentive Payment and are listed at *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/757/2019%20QP%20Notice%20for%20APM%20Incentive%20Payment.pdf* that after several attempts to identify current banking information through which to make the disbursement, we have been unable to do so. Eligible clinicians who are on the referenced list should follow the directions for contacting CMS and to provide updated information as specified at *https://qpp-cm-prod-content.s3.amazonaws.com/uploads/757/2019%20QP%20Notice%20for%20APM%20Incentive%20Payment.pdf* and must do so no later than February 28, 2020.

We note that our regulation at § 414.1450(d) provides that CMS will make the CY 2019 APM Incentive Payment no later than December 31, 2019. We acknowledge that pursuant to this advisory, CMS anticipates disbursing the APM Incentive Payment to some QPs after December 31, 2019. We have made every effort to make all CY 2019 APM Incentive Payments on or before December 31, 2019. However, CY 2019 was the inaugural year us to issue the APM Incentive Payments. As we identified the QPs who are the subject of this advisory, we made continued efforts, but still have not located current banking information for them. We believe it is necessary and appropriate to afford the identified QPs the opportunity to provide us with their current banking information and receive their CY 2019 APM Incentive Payments. Therefore, we are extending the payment process into CY 2020 by giving the identified individuals the opportunity to provide us the necessary information by February 28, 2020, the deadline provided in this advisory, and appropriately disbursing the CY 2019 APM Incentive Payments thereafter as soon as practicable. We fully expect, after this inaugural year of the Advanced APM Incentive Payment, to make all payments within the timeframe specified in regulation.

Dated: December 19, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–28010 Filed 12–26–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180831813–9170–02; RTID 0648–XY062]

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Prohibited Species Catch Limits in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS is reapportioning the projected unused amount, 3,342 Chinook salmon prohibited species catch limit, from the vessels participating in directed fishing for pollock in the Central Regulatory area of the Gulf of Alaska (GOA) to vessels participating in directed fishing for pollock in the Western Regulatory area of the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), December 23, 2019, until 2400 hours A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2019 Chinook salmon prohibited species catch (PSC) limit for vessels directed fishing for pollock using trawl gear in the Western Regulatory Area of the GOA is 6,684 Chinook salmon (§ 679.21(h)(2)(i)).

The 2019 Chinook salmon PSC limit for vessels directed fishing for pollock using trawl gear in the Central Regulatory Area of the GOA is 18,316 Chinook salmon (§ 679.21(h)(2)(ii)).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the vessels participating in directed fishing for pollock in the Central Regulatory area of the GOA will not require 3,342 Chinook salmon of the Chinook salmon PSC limit allocated to those vessels under § 679.21(h)(2)(ii)). Therefore, in accordance with § 679.21(h)(5)(iii) and taking into account the need of the sectors for Chinook salmon PSC, and following the limits set forth in § 679.21(h)(5)(iv)(A), NMFS reapportions 3,342 Chinook salmon PSC limit to vessels participating in the directed fishery for pollock in the Western Regulatory area of the GOA.

The 2019 Chinook salmon PSC limits are revised as follows: 14,974 Chinook salmon for vessels participating in directed fishing for pollock in the Central Regulatory area of the GOA (18,316 minus 3,342 Chinook salmon) and 10,026 Chinook salmon for vessels participating in the directed fishery for pollock in the Western Regulatory area of the GOA (6,684 plus 3,342 Chinook salmon).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 18, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2019.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–28132 Filed 12–23–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 249
Monday, December 30, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LP–19–0012]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in domestic cattle inventories as well as changes in levels of imported cattle, beef, and beef products that have occurred since the Board was last reapportioned in July 2017. These adjustments are required by the Beef Promotion and Research Order (Order) and, if adopted, would result in an increase in Board membership from 99 to 101, effective with the Secretary of Agriculture's (Secretary) appointments for terms beginning early in the year 2021.

DATES: Submit comments on or before February 28, 2020.

ADDRESSES: Comments should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number AMS–LP–19–0012, the date of submission, and the page number of this issue of the **Federal Register**. Comments may also be sent to Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2610–S, STOP 0251, 1400 Independence Avenue SW; Washington, DC 20250–0251; or via fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kahl Sesker, Research and Promotion Division, at (202) 253–8253; fax (202) 720–1125; or by email at *Kahl.Sesker@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and therefore, the Office of Management and Budget (OMB) has waived review of this action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct efforts on Tribal governments or significant Tribal implications.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581–0093.

Background and Proposed Action

The Board was initially appointed on August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901–2911), and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, while importer representation is based on the conversion of the volume of imported cattle, beef, and beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years, but not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications to the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2)

provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit is entitled to an additional Board member for each additional 1 million head of cattle within the unit, as provided in § 1260.141(e)(4). Further, as provided in § 1260.141(e)(3), importers are represented by a single unit, with their number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The proposed producer representation is based on an average of the inventory of cattle in the various States on January 1 in 2017, 2018, and 2019 as reported by USDA's National Agricultural Statistics Service (NASS). The proposed importer representation is based on a combined total average of the 2016, 2017, and 2018 live cattle imports as published by USDA's Economic Research Service (ERS) and the average of the 2016, 2017, and 2018 live animal equivalents for imported beef and beef products.

In considering reapportionment, the Board reviewed cattle inventories as of January 1 in 2017, 2018, and 2019, as well as cattle, beef, and beef product import data for the period of January 1, 2016, to December 31, 2018. The Board determined that an average of the inventory of cattle on January 1 in 2017, 2018, and 2019 best reflect the number of cattle in each State or unit since publication of the last reapportionment rule in 2017 (82 FR 27611). The Board reviewed data published by ERS to determine proper importer representation. The Board recommended the use of the average of a combined total of the 2016, 2017, and 2018 cattle import data and the average of the 2016, 2017, and 2018 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

The Board's recommended reapportionment plan, if adopted, would increase the number of representatives on the Board from 99 to 101. From the Board's analysis of USDA cattle inventories and import equivalencies, Nebraska would gain one Board seat, Texas would gain one Board seat, and Wisconsin would gain one Board seat. Geographic changes would include dissolving the Southeast Unit so that Alabama and Georgia would be stand-alone States that have enough inventory to each qualify for a position on the Board. South Carolina would be added to the Mid-Atlantic Unit. Maryland would move from the Mid-Atlantic Unit to the Northeast Unit, leaving South Carolina and West Virginia to make up the new Mid-Atlantic Unit, which would qualify for one member. The new Northeast Unit would qualify for one member and be composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Importer representation would remain at seven.

The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows:

State/unit	Increase/decrease	Current representation	Revised representation
Alabama	+1 (moved from Southeast Unit)	0	1
Georgia	+1 (moved from Southeast Unit)	0	1
Nebraska	+1	6	7
Texas	+1	12	13
Wisconsin	+1	3	4
Mid-Atlantic Unit	No change	1	1
Northeast Unit	No change	1	1
Southeast Unit	−3	3	0
Net Change	+2		

Note: The Southeast Unit would dissolve. Alabama and Georgia, formerly of SE Unit will each have one member on the Board. South Carolina, formerly of SE Unit, moves to Mid-Atlantic Unit. Maryland moves from the Mid-Atlantic Unit and to the Northeast Unit leaving South Carolina and West Virginia to make up the new Mid-Atlantic Unit and qualify for one member. The new Northeast Unit continues to qualify for one member. In summary, the Board will be composed of 101 members (99 − 3 + 5 = 101).

The Board reapportionment as proposed by this rulemaking would take effect, if adopted, with the Secretary's appointments to fill positions early in the year 2021.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

Initial Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS considered the economic effect of this action on small entities and determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Effective August 19, 2019, the SBA published an interim final rule (RIN 3245–AH17) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for small beef, veal, and cattle importing firms changed from sales of $750,000 or less to sales of $1,000,000 or less.

According to the NASS 2017 Census of Agriculture, the number of operations in the United States with cattle totaled 882,692.[1] The most recent (2017) Census of Agriculture data show that roughly 4 percent of producers with cattle, or 31,601 operations, have annual receipts of $1,000,000 or more.[2] Therefore, the vast majority of cattle producers, 96 percent, would be considered small businesses with the new SBA guidance. It should be noted that producers are only indirectly impacted by the proposed rule.

Cattle, beef, and veal importers are directly impacted by the proposed rule. The original number of importing firms was determined in consultation with the Meat Import Council of America. AMS estimates that approximately 270 firms import beef or beef products, and veal and veal products into the United States, and about 198 firms import live cattle into the United States. The 2012 Economic Census, produced by the U.S. Commerce Department, and accessible through the American Fact Finder website, provides the most recent data on firm size by sales revenue.[3] However, data on the firm size of beef, veal, and cattle importers are not available in this or other economic databases, as there is no NAICS code specific enough for this industry segment.

The 2012 Economic Census does have information on the broader marketing chain, specifically the size distribution of meat and meat product wholesalers (NAICS 42447).[4] These data show that 18 percent of firms in the industry classification of meat and meat product wholesalers are considered small businesses.

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. The USDA Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. An analysis of these data over a five-year period show only minor changes in the annual import values for both beef and veal importers and cattle importers, suggesting little change in the sector overall.

The proposed rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as in cattle and beef imports. The adjustments are required by the Order and would result in an increase in Board membership from 99 to 101.

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 1260 as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Revise § 1260.141 paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2020 Board nominations and the associated appointments effective early in the year 2021, the United States shall be divided into 38 geographical units and 1 unit representing importers, for a total of 39 units. The number of Board members from each unit shall be as follows:

TABLE 1 TO PARAGRAPH (a): CATTLE AND CALVES [1]

State/unit	(1,000 Head)	Directors
1. Alabama	1,313	1
2. Arizona	1,003	1
3. Arkansas	1,763	2
4. Colorado	2,850	3
5. Florida	1,670	2
6. Georgia	1,080	1
7. Idaho	2,430	2
8. Illinois	1,190	1
9. Indiana	877	1
10. Iowa	3,950	4
11. Kansas	6,350	6
12. Kentucky	2,153	2
13. Louisiana	800	1
14. Michigan	1,163	1
15. Minnesota	2,360	2
16. Mississippi	907	1
17. Missouri	4,317	4
18. Montana	2,567	3
19. Nebraska	6,683	7
20. New Mexico	1,473	1
21. New York	1,477	1
22. North Carolina	810	1
23. North Dakota	1,837	2
24. Ohio	1,303	1
25. Oklahoma	5,133	5
26. Oregon	1,303	1
27. Pennsylvania	1,613	2

[1] *https://www.nass.usda.gov/AgCensus/index.php.*

[2] *https://quickstats.nass.usda.gov/results/EC7DF8E2-6791-347F-BC4F-3F81988D7DDB.*

[3] *https://factfinder.census.gov.*

[4] Source: U.S. Census Bureau, 2012 Economic Census, Search code EC1242SSSZ1_with_ann.

TABLE 1 TO PARAGRAPH (a): CATTLE AND CALVES [1]—Continued

State/unit	(1,000 Head)	Directors
28. South Dakota	3,967	4
29. Tennessee	1,820	2
30. Texas	12,600	13
31. Utah	807	1
32. Virginia	1,480	1
33. Wisconsin	3,500	4
34. Wyoming	1,317	1
35. Northwest Unit		
• Alaska	15	
• Hawaii	143	
• Washington	1,163	
Total	1,321	1
36. Northeast Unit		
• Connecticut	48	
• Delaware	16	
• Maine	81	
• Maryland	192	
• Massachusetts	38	
• New Hampshire	35	
• New Jersey	29	
• Rhode Island	5	
• Vermont	260	
Total	702	1
37. Mid-Atlantic Unit		
• South Carolina	342	
• West Virginia	397	
Total	738	1
38. Southwest Unit		
• California	5,167	
• Nevada	460	
Total	5,627	6
39. Importers Unit [2]	6,874	7

[1] 2017, 2018, and 2019 average of January 1 cattle inventory data.
[2] 2016, 2017, and 2018 average of annual import data.

* * * * *

Dated: December 20, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–28057 Filed 12–27–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2019–0023]

RIN 1557–AE69

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1682]

RIN 7100–AF62

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AF08

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD38

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AB03

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (collectively, the agencies) are reopening the comment period for the notice of proposed rulemaking published in the **Federal Register** on November 7, 2019, to amend the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Proposed Swap Margin Amendments). Reopening the comment period that closed on December 9, 2019, will allow interested persons additional time to analyze and comment on the Proposed Swap Margin Amendments.

DATES: The comment period for the notice of proposed rulemaking published on November 7, 2019 at 84 FR 59970, is reopened from December 9, 2019, to January 23, 2020.

ADDRESSES: You may submit comments by any of the methods identified in the notice of proposed rulemaking, except that the FCA is no longer accepting comments through the Federal eRulemaking Portal at *www.regulations.gov.* Commenters may submit comments to the FCA through any of the other methods that FCA identified in the notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT:

OCC: Chris McBride, Director for Market Risk, Treasury and Market Risk Policy, (202) 649–6402, or Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, or John Feid, Principal Economist, (202) 452–2385, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089, Jason Shafer, Senior Counsel, (202) 728–5811, or Justyna Bolter, Senior Attorney, (202) 452–2686, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Irina Leonova, Senior Policy Analyst, *ileonova@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–3843; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

FCA: Jeremy R. Edelstein, Associate Director, Finance & Capital Market Team, Timothy T. Nerdahl, Senior Policy Analyst, Clayton D. Milburn, Senior Financial Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling & Simulations, (202) 649–3685, *Christopher.Vincent@fhfa.gov,* or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 2019, the agencies published in the **Federal Register** a notice of proposed rulemaking (the NPR) that would amend the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule).[1] Specifically, the NPR proposed to make the following changes to the Swap Margin Rule:

First, the proposal would provide relief by allowing legacy swaps—swaps that were entered into before the applicable compliance date of the Swap Margin Rule– to be amended to replace existing interest rate provisions based on certain interbank offered rates (IBORs) and other interest rates that are reasonably expected to be discontinued or are reasonably determined to have lost their relevance as a reliable benchmark due to a significant impairment, without such swaps losing their legacy status.

Second, the proposal would amend the Swap Margin Rule's requirements for inter-affiliate swaps. The proposal would repeal the requirement for a covered swap entity to collect initial margin from its affiliates, but would retain the requirement that variation margin be exchanged for affiliate transactions.

Third, the proposal would add an additional initial margin compliance period for certain smaller counterparties, and clarify the existing trading documentation requirements in § __.10 of the Rule.

Fourth, the proposal would amend the Swap Margin Rule to permit amendments caused by conducting certain routine life-cycle activities that covered swap entities may conduct for legacy swaps, such as reduction of

[1] 84 FR 59970 (Nov. 7, 2019).

notional amounts and portfolio compression exercises, without triggering margin requirements.

II. Reopening of Comment Period and Request for Comment

The original comment period for the NPR closed on December 9, 2019.[2] The agencies received public comments requesting an extension of the comment period, noting that the commenters did not have sufficient time to analyze fully the agencies' notice of proposed rulemaking during the original 30-day comment period. To give these, and similarly situated, commenters additional time, the agencies are re-opening the comment period through January 23, 2020, until which time interested parties may submit public comments on the rule amendments proposed and the questions presented in the NPR.

Dated: December 20, 2019.

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 20, 2019.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 19, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 20th day of December, 2019.

Dale L. Aultman,

Secretary.

December 12, 2019.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2019–28052 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8070–01–P; 6705–01–P

[2] *See* 84 FR 59970 (November 7, 2019).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. FDA–2008–P–0086]

Cheeses and Related Cheese Products; Proposal To Permit the Use of Ultrafiltered Milk; Reopening the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the proposed rule published in the **Federal Register** of October 19, 2005, entitled ''Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk.'' The proposed rule would amend our regulations to provide for the use of fluid ultrafiltered (UF) milk in the manufacture of standardized cheeses and related cheese products. We are reopening the comment period to receive new information and further comment on current industry practices regarding the use of fluid UF milk and fluid UF nonfat milk in the manufacture of standardized cheeses and related cheese products, and the declaration of fluid UF milk and fluid UF nonfat milk when used as ingredients in standardized cheeses and related cheese products.

DATES: FDA is reopening the comment period on the proposed rule published on October 19, 2005 (70 FR 60751). Submit either electronic or written comments by March 30, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 30, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2008–P–0086 for ''Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk.'' Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed

confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Reese, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 19, 2005, we proposed to amend our regulations to provide for the use of fluid UF milk in the manufacture of standardized cheeses and related cheese products. Specifically, the proposed rule, if finalized, for standardized cheeses and related cheese products, would (1) Amend the definitions of ''milk'' and ''nonfat milk'' in § 133.3 (21 CFR 133.3) to provide for ultrafiltration of milk and nonfat milk; and (2) define ultrafiltered milk and ultrafiltered nonfat milk in § 133.3 as raw or pasteurized milk or nonfat milk that is passed over one or more semipermeable membranes to partially remove water, lactose, minerals, and water-soluble vitamins without altering the casein-to-whey protein ratio of the milk or nonfat milk and resulting in a liquid product. FDA also proposed that the name of such treated milk be ''ultrafiltered milk'' or ''ultrafiltered nonfat milk,'' as appropriate. Consequently, when this type of milk is used, it would be declared in the ingredient statement of the finished food as ''ultrafiltered milk'' or ''ultrafiltered nonfat milk.''

This proposal was issued in response to citizen petitions from the American Dairy Products Institute and the National Cheese Institute, the Grocery Manufacturers of America, Inc., and the National Food Processors Association. Interested persons were originally given until January 17, 2006, to comment. We subsequently reopened the comment period to seek further comment on two specific issues raised by the comments concerning the proposed ingredient declaration (72 FR 70251, December 11, 2007); the reopened comment period was scheduled to end on February 11, 2008. In the **Federal Register** of February 11, 2008 (73 FR 7692), we extended the comment period until April 11, 2008.

In the **Federal Register** of August 14, 2017 (82 FR 37815), we announced the availability of a guidance for industry entitled ''Ultrafiltered Milk in the Production of Standardized Cheeses and Related Cheese Products.'' In the guidance, we notified manufacturers who wish to use UF milk or UF nonfat milk in the production of standardized cheeses and related cheese products of our intent to exercise enforcement discretion regarding the use of fluid UF milk and fluid UF nonfat milk in the production of standardized cheeses and related cheese products, provided that the physical, chemical, and organoleptic properties of the cheese or cheese product are not affected. We also stated our intent to exercise enforcement discretion with respect to the labeling of fluid UF milk and fluid UF nonfat milk in recognition of the costs and logistics involved in label changes; however, we encouraged industry to identify these ingredients as ''ultrafiltered milk'' and ''ultrafiltered nonfat milk'' to the extent feasible and appropriate. We further explained that we intend to exercise enforcement discretion until we have completed a rulemaking process amending our regulations with respect to the issues covered by the guidance or announced our determination not to proceed with such a rulemaking.

II. Additional Issues for Consideration

To inform our decision on whether to proceed with the rulemaking initiated in the October 19, 2005, proposal, we seek new information and public comment on current industry practices regarding the use of fluid UF milk and fluid UF nonfat milk in the manufacture of standardized cheeses and related cheese products, and the declaration of fluid UF milk and fluid UF nonfat milk in the labeling of these products when used as ingredients. Of particular interest, we seek comment on the following questions:

1. We would like to understand whether there is variable use of fluid UF milk or fluid UF nonfat milk in the production of standardized cheeses and related cheese products. For example, if a company uses fluid UF milk in the production of a standardized cheese, does the amount of fluid UF milk remain constant, or does the amount vary depending on certain factors (such as the cost of fluid UF milk)? Please explain whether the amount of fluid UF milk or fluid UF nonfat milk varies for specific standardized cheeses and related cheese products and the factors that influence the variability. To maintain the essential characteristics of the standardized cheese or cheese product, is the amount of fluid UF milk or fluid UF nonfat milk limited to a range (*i.e.,* a minimum and maximum amount)? Please identify the specific standardized cheese or cheese product and provide any ranges or amounts and explain your reasoning.

2. (a) We invite comment on why manufacturers may sometimes produce their particular brands of standardized cheeses and related cheese products with fluid UF milk or fluid UF nonfat milk and sometimes without fluid UF milk or fluid UF nonfat milk. Please explain your reasoning.

(b) Given that manufacturers may sometimes choose to produce these products with or without fluid UF milk or fluid UF nonfat milk, we are interested in how ingredient labeling of these standardized cheeses and related cheese products could be addressed.

Our understanding is that fluid UF milk and fluid UF nonfat milk, when used as ingredients in cheese, are always used in lesser amounts by weight than milk and nonfat milk in order to avoid affecting the physical, chemical, and organoleptic properties of the cheese. For example, a manufacturer might use milk and fluid UF milk, but our understanding is that the amount of fluid UF milk will be less than that of milk. As such, milk would be the predominant ingredient and declared first in the ingredient statement, per FDA's regulations that require ingredients to be declared by their common or usual names in descending order of predominance by weight (21 CFR 101.4(a)). Fluid UF milk, if used, would be declared thereafter.

Based on our understanding, we are considering whether, when fluid UF milk and fluid UF nonfat milk are sometimes used as ingredients, the labeling of standardized cheeses and cheese products may alternatively declare ''milk or milk and ultrafiltered

milk'' or ''nonfat milk or nonfat milk and ultrafiltered nonfat milk'' in the ingredient statements. We invite comment on this consideration and whether such declarations would indicate that fluid UF milk or fluid UF nonfat milk may be an ingredient, but not as predominant as milk or nonfat milk, and also enable manufacturers to avoid relabeling costs if they use varying amounts of fluid UF milk or fluid UF nonfat milk. Please discuss whether such declarations would be informative (or, conversely, potentially misleading to consumers) and please explain your reasoning.

3. We also are interested in issues related to the costs of printing different product labels and the logistics involved in label changes when fluid UF milk and fluid UF nonfat milk are sometimes used as ingredients in the production of a manufacturer's standardized cheese or cheese product. For example, what impacts, if any, would a label statement of ''milk or milk and ultrafiltered milk'' or ''nonfat milk or nonfat milk and ultrafiltered nonfat milk'' have on labeling costs? How would these costs compare if fluid UF milk and fluid UF nonfat milk are declared only when used in the standardized cheese or cheese product? Please explain your reasoning.

4. Ultrafiltered milk is being used in a greater number of food products than in the past. There are dairy products in the marketplace, which appear to have gained consumer acceptance, where ''ultrafiltered milk'' has appeared in the statement of identity or declared in the ingredient statement on the product label. Are there any situations where retailers or consumers would not purchase standardized cheeses or cheese products labeled as containing ''ultrafiltered milk'' as an ingredient? Please describe such situations and provide any recent consumer data or market analyses you may have to explain your reasoning.

Dated: December 19, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28145 Filed 12–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100956–19]

RIN 1545–BP16

Source of Income From Certain Sales of Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations modifying the rules for determining the source of income from sales of inventory produced within the United States and sold without the United States or vice versa. These proposed regulations also contain new rules for determining the source of income from sales of personal property (including inventory) by nonresidents that are attributable to an office or other fixed place of business that the nonresident maintains in the United States. Finally, these proposed regulations modify certain rules for determining whether foreign source income is effectively connected with the conduct of a trade or business within the United States.

DATES: Comments and requests for a public hearing must be received by February 28, 2020.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100956–19) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (''Treasury Department'') and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–100956–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations Brad McCormack, (202) 317–6911 or Anisa Afshar, (202) 317–4999; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

These regulations (the ''proposed regulations'') contain proposed amendments to 26 CFR part 1 revising the rules under section 863 of the Internal Revenue Code (the ''Code'') for determining the source of gross income from sales of certain property, and under section 864 for treating foreign source income as effectively connected with the conduct of a trade or business within the United States. Conforming revisions are made to current regulations that reference section 863. The proposed regulations also provide guidance under section 865(e)(2) and (3) regarding the source of income from the sale of personal property, including inventory property, within the meaning of section 865(i)(1) (''inventory''), by nonresidents.

The Tax Cuts and Jobs Act, Pub. L. 115–97 (2017) (the ''Act''), enacted on December 22, 2017, amended section 863 of the Code, which provides special rules for determining the source of income, including income partly from within and partly from without the United States. Specifically, section 14303 of the Act amended section 863(b) to allocate or apportion income from the sale or exchange of inventory property produced (in whole or in part) by a taxpayer within and sold or exchanged without the United States or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States (collectively, ''Section 863(b)(2) Sales'') solely on the basis of production activities with respect to that inventory. Before the Act, section 863(b) provided that income from Section 863(b)(2) Sales would be treated as derived partly from sources within and partly from sources without the United States without providing the basis for such allocation or apportionment.

Current § 1.863–3 provides rules for allocating or apportioning gross income from Section 863(b)(2) Sales. Those rules provide several methods for determining the amount of gross income from Section 863(b)(2) Sales that is attributable to production activity and the amount of gross income attributable to sales activity, with different rules then applying to source the portion of the income derived from production activity versus sales activity. *See* current § 1.863–3(b). Current § 1.863–3(f) provides rules for gains, profits, and income that are treated as derived partly from sources within the United States and partly from sources within a possession of the United States (generally referred to herein as a ''U.S. territory'').

With respect to production activity, current § 1.863–3(c)(1)(ii) provides a formula for allocating or apportioning gross income where there is production activity both within and without the United States. Current § 1.863–3(c)(1)(ii)(A) determines the amount of income from sources without the United States by multiplying all the income attributable to taxpayer's production activities by a fraction, the numerator of which is the average adjusted basis of production assets that are located outside the United States and the denominator of which is the average adjusted basis of all the production assets located within and without the United States. For purposes of applying this formula, the adjusted basis of production assets is determined under section 1011, which is adjusted under section 1016 for depreciation deductions allowed. Section 13201 of the Act amended section 168(k) to allow an additional first-year depreciation deduction of 100 percent of the basis of certain property placed in service after September 27, 2017, and before January 1, 2023. Therefore, certain new and used production assets placed in service and used predominantly within the United States during this period may have an adjusted basis of zero. After December 31, 2022, qualifying property placed in service before January 1, 2027 (or, in the case of certain property, January 1, 2028), is still subject to accelerated depreciation for an amount equal to the applicable percentage of the basis of the property. Section 168(k)(1) and (6). However, production assets placed in service or used predominantly without the United States, or both, do not qualify for this accelerated depreciation and must be depreciated using the straight line method under the alternative depreciation system (''ADS'') of section 168(g)(2). *See* section 168(g)(1)(A).

Section 865, added to the Code as part of the Tax Reform Act of 1986, Pub. L. 99–514 (1986) (the ''TRA''), provides rules for sourcing sales of personal property. The general rule of section 865(a)(1) is that income from a sale of personal property is sourced based on the residence of the seller. Section 865(b) excepts inventory from this rule and sources income from the sale of inventory generally based on either the place of sale (for purchased inventory under section 861(a)(6) or 862(a)(6)) or based on the allocation and apportionment rules of section 863 (for inventory produced by the taxpayer). The place of sale rules typically depend upon the location where title to the inventory passes from the seller to the buyer. *See* § 1.861–7(c).

Section 865(c) provides special rules for sourcing gain from the sale of depreciable personal property. Under section 865(c)(1), gain from the sale of depreciable personal property that is not in excess of depreciation adjustments is allocated between sources within and without the United States by treating the same proportion of such gain as sourced within the United States as the United States depreciation adjustments (as defined in section 865(c)(3)) with respect to such property bear to the total depreciation adjustments, and by treating the remaining portion of such gain as sourced without the United States. Under section 865(c)(2), gain in excess of the depreciation adjustments is sourced as if such property were inventory.

Section 865(e)(2) provides a further overlay to these rules with respect to all sales of personal property (including inventory) by nonresidents, as that term is defined in section 865(g)(1)(B), attributable to an office or other fixed place of business in the United States. Section 865(e)(2)(A) generally provides that income from any sale of personal property attributable to such an office or other fixed place of business is sourced in the United States. An exception is provided in section 865(e)(2)(B) for a sale of inventory for use, disposition, or consumption outside the United States if a foreign office of the nonresident ''materially participated'' in the sale. Section 865(e)(3) provides that the ''principles of section 864(c)(5) shall apply'' to determine whether a nonresident has an office or other fixed place of business and whether a sale is attributable to such office or other fixed place of business. Where applicable, section 865(e)(2) applies ''[n]otwithstanding any other provisions'' of subchapter N, part I, including sections 863(b), 861(a)(6), and 862(a)(6).

Section 864(c) provides the general rules for determining whether income is treated as effectively connected with the conduct of a trade or business within the United States. Nonresident alien individuals, foreign corporations, and bona fide residents of a U.S. territory (''non-U.S. persons'') engaged in a trade or business within the United States are generally subject to U.S. net basis taxation on income that is effectively connected with that trade or business. Section 864(c)(2) provides that income described in section 871(a)(1) or (h) or section 881(a) or (c), as well as U.S. source capital gains or losses, are determined to be effectively connected or not based on two tests—whether the income is ''derived from assets'' used in the non-U.S. person's trade or business or whether the activities of the trade or business were a ''material factor'' in the realization of the income. Section 864(c)(3) generally treats U.S. source income not described in section 864(c)(2) as effectively connected with a non-U.S. person's trade or business within the United States. Section 864(c)(4)(B) sets forth additional rules that treat certain foreign source income as effectively connected with the conduct of a U.S. trade or business if a non-U.S. person has an office or other fixed place of business within the United States to which the income is attributable, including income from certain sales of inventory as described in section 864(c)(4)(B)(iii).

Section 864(c)(5)(A) provides rules for determining whether a non-U.S. person has an office or other fixed place of business to which section 864(c)(4)(B) may apply as the result of the presence of an agent in the United States, and section 864(c)(5)(B) provides a threshold requirement for determining whether any income is attributable to such an office or other fixed place of business. Once it is determined that an office or other fixed place of business in the United States exists and income is attributable thereto, section 864(c)(5)(C) provides that the amount of income so attributable is generally the amount that is properly allocable to the office or other fixed place of business. Section 864(c)(5)(C) further provides that, with respect to certain sales of inventory described in section 864(c)(4)(B)(iii), the amount attributable to the office or fixed place of business cannot exceed the income that would otherwise have been U.S. source had the sale been made in the United States. As noted, the principles of section 864(c)(5) apply in the context of section 865(e)(2) pursuant to section 865(e)(3).

Explanation of Provisions

Consistent with the Act's changes to section 863(b)(2), these proposed regulations amend § 1.863–3 in order to properly allocate or apportion gross income from Section 863(b)(2) Sales based solely on production activity, and remove the methods for allocating or apportioning gross income between production and sales activity. In addition, because of the Act's change to section 168(k) to allow accelerated depreciation in some circumstances, these proposed regulations provide a new rule for computing the adjusted basis of production assets for purposes of applying the formula for allocating or apportioning gross income where there is production activity both within and

without the United States. These proposed regulations also contain conforming amendments to other regulations that allocate or apportion income between production and sales activity. In addition, these proposed regulations make minor changes to §§ 1.937–2, 1.937–3, and 1.1502–13 to update relevant cross references and examples.

These regulations also add proposed § 1.865–3 to clarify the proper scope and application of section 865(e)(2), as well as the interaction between section 865(e)(2) and section 865(c) regarding the sourcing of income from the sale of certain depreciable personal property. The proposed regulations also clarify the interaction between the section 865(e)(2) rules and the rules governing effectively connected income under section 864(c)(4)(B)(iii) and (c)(5). The proposed regulations amend § 1.864–6(c), the current rules for determining the amount of foreign source effectively connected income attributable to an office or other fixed place of business within the United States, to be consistent with the proposed sourcing rules applicable to produced inventory sales under section 865(e)(2).

I. Modification of Current § 1.863–3 and Other Regulations To Reflect the Amendments of Section 863(b) and Section 168(k)

A. Proposed Changes to § 1.863–3 To Reflect the Amendment of Section 863(b)

Before amendment by the Act, section 863(b)(2) provided that gains, profits, and income from Section 863(b)(2) Sales were sourced partly from sources within and partly from sources without the United States, but did not prescribe a particular method of allocating or apportioning between these two sources. Accordingly, current § 1.863–3 provides allocation or apportionment methods for Section 863(b)(2) Sales. Under those regulations, a taxpayer must allocate or apportion gross income from Section 863(b)(2) Sales between production activity and sales activity using one of three methods described in current § 1.863–3(b): The 50/50 method described in paragraph (b)(1), the independent factory price (''IFP'') method described in paragraph (b)(2), or the books and records method described in paragraph (b)(3). Current § 1.863–3(d) provides rules for allocating and apportioning expenses to gross income from Section 863(b)(2) Sales, including a requirement to apportion expenses pro rata based on the source of gross income where the 50/50 method has been used. Current § 1.863–3(e) provides rules for electing one of these methods and the related information that a taxpayer must disclose on a tax return.

The Act amended section 863(b) to source income from Section 863(b)(2) Sales solely on the basis of the production activity with respect to the inventory sold, and as a result sales activity is no longer a relevant factor for allocating or apportioning income under that section. Therefore, these proposed regulations remove the three methods in paragraph (b) and the related election rules in paragraph (e). Proposed § 1.863–3(b) requires sourcing of Section 863(b)(2) Sales based solely on the location of production activities, consistent with section 863(b)(2), as amended. Given the elimination of the 50/50 method, the proposed regulations no longer provide for the apportionment of expenses based solely on relative gross income from U.S. and foreign sources. Instead, the proposed regulations provide that expenses are allocated and apportioned based on the generally-applicable rules in §§ 1.861–8 through 1.861–17.

B. Proposed Changes to § 1.863–3(e)

Proposed § 1.863–3(e) (which replaces current § 1.863–3(f)) does not provide a specific rule for sourcing gross income derived from the sale of inventory produced (in whole or in part) by the taxpayer within the United States and sold within a U.S. territory, or produced (in whole or in part) by a taxpayer in a U.S. territory and sold within the United States. Instead, proposed § 1.863–3(e) provides a cross-reference directing taxpayers to source such income under the rules provided by proposed § 1.863–3(c). Proposed § 1.863–3(e) modifies the rule for sourcing gross income derived from the purchase of personal property within a U.S. territory and its sale within the United States under section 863(b)(3). Consistent with proposed § 1.863–3(b), proposed § 1.863–3(e) removes the books and records method provided by current § 1.863–3(f)(3)(i)(B). Instead, proposed § 1.863–3(e)(3)(i) requires sourcing such income based solely upon the taxpayer's business activity.

C. Proposed Changes to § 1.863–3 To Reflect the Amendment of Section 168(k)

Notwithstanding the changes to section 863(b) required by the Act, there remains a need for rules to allocate or apportion gross income from Section 863(b)(2) Sales between U.S. and foreign sources where, with respect to inventory, there is production activity both within and without the United States. The proposed regulations retain the existing rules in current § 1.863–3(c)(1)(ii) for sourcing gross income from production activity where there is production activity both within and without the United States. The proposed regulations do not amend current § 1.863–3(c)(1)(ii)(A), which determines the amount of foreign source income in such cases by multiplying the total gross income from Section 863(b)(2) Sales by a fraction, the numerator of which is the average adjusted basis of production assets located outside the United States and the denominator of which is all production assets within and without the United States. The remaining income is treated as U.S. source.

Because of the Act's change to section 168(k) to allow accelerated depreciation in some circumstances, the Treasury Department and the IRS have determined that a new rule is needed in current § 1.863–3(c)(1)(ii)(B) for computing the adjusted basis of production assets for purposes of the formula for allocating or apportioning gross income where there is production activity both within and without the United States. Absent a change to the rules of current § 1.863–3(c)(1)(ii)(B), the Act's modifications to the depreciation treatment of U.S. production assets will have the unintended effect of skewing the apportionment formula in favor of foreign source income because non-U.S. production assets (relative to U.S. production assets) will generally have a higher adjusted basis. Therefore, these proposed regulations modify the measurement of the basis of U.S. production assets under current § 1.863–3(c)(1)(ii)(B) for purposes of the apportionment formula of proposed § 1.863–3(c)(2)(i). The proposed regulations measure the basis of U.S. production assets based on ADS under section 168(g)(2) so that the basis of both U.S. and non-U.S. production assets is measured consistently on a straight line method over the same recovery period.

The Treasury Department and the IRS have determined that requiring the use of ADS for purposes of proposed § 1.863–3 is consistent with other provisions of the Act that require the use of ADS. For example, sections 951A(d)(3) and 250(b)(2)(B) (by cross reference to section 951A(d)) both require the use of ADS for purposes of determining qualified business asset investment to calculate global intangible low-taxed income and foreign-derived intangible income, respectively. The use of ADS is also consistent with the interest allocation rules in § 1.861–9(i)(1)(i). Nevertheless, the Treasury Department and the IRS request

comments regarding the suitability of using ADS for these purposes and whether there is a more appropriate way to compare U.S. and non-U.S. production assets for purposes of proposed § 1.863–3, such as the relative U.S. and non-U.S. production assets reported on the taxpayer's financial statements.

The proposed regulations do not otherwise modify the rules in current § 1.863–3 for determining the location or existence of production activity, a topic the Treasury Department and the IRS may address in future guidance. The Treasury Department and the IRS request comments regarding other potential approaches to determine the location or existence of production activity or other modifications to current or proposed § 1.863–3 that may be appropriate.

D. Proposed Changes to Other Regulations Under Section 863 To Reflect the Changes to § 1.863–3

The proposed regulations also modify current § 1.863–1, current § 1.863–2, and current § 1.863–8 to reflect the changes to current § 1.863–3. Proposed § 1.863–1(b) provides special rules for allocating or apportioning gross income from the sale of natural resources, which can be a subset of inventory generally. *See* proposed § 1.863–2(b). Current § 1.863–1(b)(1) provides a general ''export terminal'' rule that allocates sales income at the export terminal, sourcing gross receipts equal to the fair market value of the natural resources at the export terminal to the location of the farm, mine, well, deposit, or uncut timber, and gross receipts in excess of that amount either to the place of sale or according to the rules in § 1.863–3, depending on the circumstances.

Current § 1.863–1(b)(2) provides a special rule for taxpayers performing additional production activities before the relevant product is shipped from the export terminal. The gross receipts are allocated between sources within and without the United States based on the fair market value of the product immediately before the additional production activities. Gross receipts equal to the fair market value of the natural resources immediately before the additional production activities are sourced to the location of the farm, mine, well, deposit or uncut timber, and the gross receipts in excess of that fair market value are sourced based on § 1.863–3.

As it is generally no longer appropriate under section 863(b)(2) to allocate or apportion any gross income from sales of inventory, including natural resources, to sales activity, the proposed regulations modify current § 1.863–1(b) to remove the export terminal rule so that, where there is no additional production activity with respect to the natural resource, all gross income from sales of natural resources inventory is based on the location of the farm, mine, oil or gas well, other natural deposit, or uncut timber from which the natural resource is derived. In other words, where there are no additional production activities, the location of the farm, mine, oil or gas well, other natural deposit, or uncut timber is considered the place of production generally.[1]

Where there are additional production activities with respect to the natural resource either within or without the jurisdiction from which the natural resource is derived, the gross income is allocated or apportioned first to the jurisdiction where the farm, mine, oil or gas well, other natural deposit, or uncut timber is located, in an amount equal to the fair market value of the product before the additional production activities. Any income in excess of that fair market value is then allocated or apportioned between sources within and without the United States under proposed § 1.863–3 principles based on the location of the assets used in the additional production activities. *See* proposed § 1.863–1(b)(2).

In the case of sales of natural resources by a nonresident that are attributable to an office or other fixed place of business in the United States of such nonresident, the foregoing rules are subject to the rules of section 865(e)(2) and proposed § 1.865–3.

Current § 1.863–8(b)(3)(ii) provides a special rule for allocating and apportioning income under section 863(d) derived from sales of property (including inventory) produced by a taxpayer if the property is produced or sold, at least in part, in space or international water. This rule requires the taxpayer to allocate gross income from such sales between production and sales activity under a 50/50 method, whereby half of the taxpayer's gross income will be considered income allocable to production activity and the remaining half of such gross income will be considered income allocable to sales activity. As it is generally no longer appropriate under section 863(b)(2) to allocate or apportion any gross income from sales of inventory produced by a taxpayer (including production in space or international water) to sales activity, the proposed regulations modify current § 1.863–8(b)(3)(ii) to remove the 50/50 method and replace it with a rule that allocates gross income solely on the basis of production activity.

E. Proposed Changes to Regulations Under Section 1502 To Reflect the Changes to § 1.863–3

To reflect section 863(b)(2), as amended by the Act, and the proposed regulations' amendments to § 1.863–3, the proposed regulations also amend example 14 of § 1.1502–13(c)(7)(ii)(N). This example illustrates the interaction between the intercompany transaction rules under current § 1.1502–13 and the sourcing rules in section 863. As revised by the proposed regulations, the example continues to illustrate the same matching principles for intercompany transactions under proposed § 1.1502–13 while updating the facts and analysis to reflect the changes in section 863(b)(2) and § 1.863–3.

II. Proposed Rules for Sales of Personal Property by Nonresidents

A. Proposed Source Rules Under § 1.865–3 To Take Into Account Section 863(b)

1. Interaction of Section 863(b), as Amended, With Section 865(e)(2)

In light of the changes made by the Act to section 863(b), the Treasury Department and the IRS are concerned that nonresident taxpayers may take an improper position that these changes override the application of section 865(e)(2) as it applies to sales[2] of inventory[3] produced by a nonresident taxpayer and sold through a U.S. sales office, despite the fact that section 865(e)(2) applies ''[n]otwithstanding any other provisions in [sections 861 through 865].'' To address this improper interpretation of section 865(e)(2), and to provide guidance for the application of section 865(e)(2) in general, the proposed regulations add proposed § 1.865–3.

Section 865, enacted in 1986 as part of the TRA, provides special sourcing rules for sales of personal property. In particular, section 865(e)(2) provides that ''[n]otwithstanding any other provisions of this part,'' if a nonresident has an office or other fixed place of business in the United States, ''income

[1] Treasury Decision 8687, 1996–2 C.B. 47, added the export terminal rule in current § 1.863–1(b) partly in response to the decision in *Phillips Petroleum Co.* v. *Commissioner,* 97 T.C. 30 (1991), *aff'd without published opinion,* 70 F.3d 1282 (10th Cir. 1995). These proposed regulations follow *Phillips Petroleum* in treating natural resources, once extracted, in the same way as other types of inventory and therefore subject to section 863(b)(2), as amended.

[2] As defined in section 865(i)(2).

[3] Inventory property, as defined in section 865(i)(1).

from any sale of personal property (including inventory property) attributable to such office or other fixed place of business'' is U.S. source. Accordingly, to the extent that inventory income described in section 863(b)(2) is considered to be derived from a sale by a nonresident attributable to an office or other fixed place of business in the United States, section 865(e)(2) must be given effect in determining the source of the income.

For purposes of section 865(e)(2), section 865(e)(3) provides that the ''principles of section 864(c)(5)'' apply in determining ''whether a taxpayer has an office or other fixed place of business'' and ''whether a sale is attributable'' thereto. As described in the Background section of this preamble, section 864(c)(5)(A) provides rules for determining whether a non-U.S. person has an office or other fixed place of business to which section 864(c)(4)(B) may apply as the result of the presence of an agent in the United States, section 864(c)(5)(B) provides a threshold requirement for determining whether any income is attributable to such an office or other fixed place of business, and section 864(c)(5)(C) addresses the extent to which the income, gain, or loss is attributable to an office or other fixed place of business and includes a limitation that for sales of inventory, the income attributable to an office or other fixed place of business within the United States cannot exceed ''the income which would be derived from sources within the United States if the sale or exchange were made in the United States.''

Section 865(e)(2) may properly be read to treat all income from a sale of personal property by a nonresident as U.S. source so long as the sale is ''attributable'' to the nonresident's office or other fixed place of business in the United States. By its terms, section 865(e)(3) does not necessarily change this result because it references section 864(c)(5) only for purposes of (1) determining whether a taxpayer has an office or other fixed place of business and (2) whether a sale is attributable to such office or other fixed place of business. Section 865(e)(3) does not by its terms reference section 864(c)(5) for determining the amount of income attributable to such office or other fixed place of business. On this basis, section 865(e) may fairly be read to override section 863(b) where Section 863(b)(2) Sales of a nonresident are attributable to an office or other fixed place of business in the United States, with the result that all of the income from such sales is sourced within the United States.

On the other hand, section 865 concerns the source of income, gain, and loss, and section 865(e)(3) refers to ''the principles of section 864(c)(5),'' which determines ''income, gain or loss'' attributable to an office or other fixed place of business in the United States (as noted in subparagraphs 864(c)(5)(B) and 864(c)(5)(C), which operate together). On this basis, the Treasury Department and the IRS have determined that section 864(c)(5) may serve not only as the basis to attribute a sale to an office or other fixed place of business in the United States within the meaning of section 865(e)(2), but also as the basis, in the context of section 865(e)(2) as applicable to Section 863(b)(2) Sales, for allowing a limitation on the amount of income and gain from sales of inventory property attributable to such office or other fixed place of business and, therefore, sourced in the United States. In particular, as relevant here, section 864(c)(5)(C) limits the amount of ''income, gain, or loss'' from sales that meet the ''material factor'' threshold of section 864(c)(5)(B) to the amount of income ''properly allocable'' to the office or other fixed place of business in the United States [4] (which is a lesser amount of income than would be allocated based on such sale under a literal reading of section 865(e)(2) (the entire amount of income)).

The last clause of section 864(c)(5)(C) also imposes a limitation in the case of sales described in section 864(c)(4)(B)(iii) (sales outside the United States made through an office or other fixed place of business in the United States) that ''the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.'' Before the enactment of section 865(e)(2), which generally caused such sales to result in U.S. source income and hence fall outside the scope of section 864(c)(4)(B)(iii), this clause was intended to limit the application of section 864(c)(4)(B) to income from sales activities, thus excluding income from production activities. The clause did not determine how much income was attributable to sales versus production activities. Following the Act, which did not amend section 865(e)(2), the Treasury Department and the IRS continue to believe that this clause has no relevance to the determination of how much income is attributable to sales activities or to sales governed by section 865(e)(2).

By incorporating the principles of section 864(c)(5), section 865(e)(3) thus authorizes regulations that would bifurcate the income from a sale of inventory property produced by a nonresident outside the United States and sold through an office or other fixed place of business in the United States so that only the ''properly allocable'' amount of income from that sale is attributable to an office or other fixed place of business in the United States and treated as U.S. source. In such a case, this amount reflects the nonresident's sales activity, not its production activities, with respect to the personal property sale, which is the portion of the income that Congress intended to treat as U.S. source when it enacted section 865(e)(2) in 1986.[5] H.R. Rep. No. 99–426, at 360–61 (1985).

The 1986 legislative history of section 865(e)(2) shows that Congress intended, by enacting that provision, to repeal (in certain cases) the title passage rule that formerly controlled the source of the ''sales income'' from the sale of personal property, regardless of where the ''sales activities'' occurred. *See* H.R. Rep. No. 99–426, at 360 (1985) (providing that ''[a]lthough the title passage rule operates clearly, it is manipulable''); *see also* S. Rep. No. 99–313, at 330–33 (1986). The legislative history shows that Congress rather sought to tax ''income derived from sales'' based on the ''location of the economic activity generating the income.'' *See* S. Rep. No. 99–313, at 330 (1986); H.R. Rep. No. 99–426, at 360 (1985). ''If the seller maintains a fixed place of business outside the seller's country of residence which materially participates in a sale, . . . the committee generally believes that the level of economic activity with respect to the sale that is associated with that place of business is high enough such that the location of that place of business should govern the source of the sales income.'' H.R. Rep. No. 99–426, at 360–61 (1985). These statements show, both individually and

[4] Section 864(c)(5)(C) actually states ''the income, gain or loss property [sic] allocable thereto.'' Based on the legislative history behind The Foreign Investors Tax Act, Public Law 89–809 (1966), which added section 864(c) to the Code, the use of ''property'' in the final bill appears to be a typographical error. The Senate Report that added this provision used the word ''properly'' not ''property.'' *See* S. Rep. No. 1707 at 1275 (1966).

[5] In the case of inventory property purchased outside the United States (other than in a U.S. territory of the United States) and sold through an office or other fixed place of business in the United States, section 863(b) has no application and hence, regardless of where title passage occurs, all of the income is considered attributable to such office or other fixed place of business and sourced in the United States.

in the aggregate, that Congress enacted section 865(e)(2) with a focus upon sourcing income from sales activity based on the economic location of the activity, rather than the location of title passage. The principles of section 864(c)(5) (and in particular subparagraph (C) thereof) give effect to this intent through section 865(e)(3) by limiting the application of section 865(e)(2) to sales income properly allocable to the office or other fixed place of business in the United States.

Before the issuance of these proposed regulations, the Treasury Department and the IRS had never issued formal guidance on the sourcing rules of section 865(e)(2) in the case of inventory property produced outside the United States and sold within the United States. Nevertheless, in light of the statutory text of section 865(e)(2) and (3) (as well as section 864(c)(5)(C) by reference) and the legislative history of these provisions, in practice, the IRS has historically interpreted section 865(e)(2) to include a limitation that treated as U.S. source only the sales income allocable to the office or other fixed place of business in the United States reflecting the sales activity from the transaction. *See, e.g.,* 1996 Field Service Advice (FSA) LEXIS 68 (Sept. 24, 1996); 1996 FSA LEXIS 465 (Feb. 29, 1996). This historical interpretation utilized the rules of section 863(b) before amendment by the Act (referenced in current § 1.864–6(c)) to determine the amount of income allocable to the office or other fixed place of business in the United States, thereby allowing taxpayers to apply, among other rules, a 50/50 split between U.S. source income (allocable to the office or other fixed place of business in the United States and reflective of sales activity) and foreign source income (reflective of production activity) for sales subject to section 865(e)(2) (the ''50/50 method''). The IRS has historically allowed the 50/50 method for establishing the amount allocable to the office or other fixed place of business in the United States (and the sales activity) under section 864(c)(5). Section 865(e)(3) incorporates into section 865(e)(2) the principles of section 864(c)(5), and so the 50/50 method approximated the effect of applying the principles of section 864(c)(5) under section 865(e)(2).

Although the Act amended section 863(b), it made no changes to section 865(e)(2), which does not explicitly reference or depend upon section 863. The 2018 Blue Book notes the absence of any change to section 865(e)(2). *See* 2018 Blue Book at 397 n.1798. Consistent with historical IRS practice, in its description of prior law, the 2018 Blue Book explains that although sections 863(b) and 865(e)(2) may appear to conflict, in the case of a nonresident manufacturing property without the United States for sale within the United States, the result is that ''the income generally is partly U.S.-source and partly foreign-source.'' [6] *Id.* at 328 n.1519.

Further, despite the changes to section 863(b) in the Act, structurally, the bifurcated approach is maintained, and section 863(b)(2) continues to refer to inventory that is produced within the United States and sold without the United States, or produced without the United States and sold within the United States. The statutory provision preserves the distinction between sales and production economic activity. If Congress intended to eliminate the sales versus production dichotomy for all purposes, it presumably would have deleted those phrases as the new flush language (that any sale of manufactured inventory property is sourced in whole based on the location of production activities) would have made them surplusage.

In light of Congress's decision to retain the underlying structure of section 863(b)(2) and append the flush language as an overlay, the IRS's longstanding interpretation of the relationship of sections 863(b)(2) and 865(e)(2) under pre-Act law, and the fact that section 865(e)(2) was left unaltered by the Act, the Treasury Department and the IRS have determined that the relationship between section 863(b)(2) and section 865(e)(2) should not be interpreted differently before and after the Act. Thus, section 865(e)(2) should continue to apply to inventory property sales income ''properly allocable'' to an office or other fixed place of business in the United States (reflecting sales activity rather than production activity) just as before the Act.

As noted, the Treasury Department and the IRS understand that some nonresident taxpayers may be taking the position that, applied after the Act, the last clause of section 864(c)(5)(C) (limiting the income treated as attributable to an office or other fixed place of business in the United States to the amount that would be U.S. source if the sale were made in the United States) causes the income from the sale of inventory produced outside the United States and subject to section 865(e)(2) to be foreign source to the same extent that it would be foreign source under section 863(b), standing alone, which would cause the sourcing of both the sales and production income from the disposition to be based on the location of production activities. Such a reading cannot be correct, because it would inappropriately construe a provision (section 865(e)(2)) intended as a separate restriction on the source rule under section 863(b)(2) (and which literally can be read as entirely overriding that rule) to be determined solely by reference to the terms of such source rule itself (rather than at most in a manner giving effect to both rules). Further, such a construction would cause section 865(e)(2) to have no effect with respect to sales of inventory that are also described in section 863(b)(2), contrary to longstanding statutory construction principles. *See, e.g., Watt* v. *Alaska,* 451 U.S. 259, 267 (1981) (statutes should be read to give effect to each if it can be done so while preserving their sense and purpose).

Moreover, such a reading would, in effect, import the change in section 863(b) from the Act into section 865(e)(2), which Congress did not do. As noted, section 865(e)(2) applies ''[n]otwithstanding any other provisions.'' Section 865(e)(3) applies the ''principles'' of section 864(c)(5), which reflects the sometimes imprecise fit between sections 864(c)(5) and 865(e)(2), such as the fact that section 864(c)(5) refers to ''income, gain or loss,'' rather than a ''sale,'' attributable to an office or other fixed place of business in the United States. The relevant principles referenced in section 865(e)(3) are those that apply for purposes of determining the income, gain, or loss attributable to an office or fixed place of business in the United States. As discussed previously in this section of the Explanation of Provisions, the last clause of section 864(c)(5)(C) is not relevant to that determination and therefore is not relevant to the application of sections 863(b) or 865(e)(2). The principles of section 864(c)(5) are those self-contained in the words of the provision itself (''properly allocable''), and not the limitation provided in the last clause of section 864(c)(5)(C) that serves a different purpose. The amendment to section 863(b)(2) did not change the traditional analysis regarding the attribution of inventory sales to an office or other fixed place of business in the United States.

In light of the foregoing, these proposed regulations clarify the application of the principles of section

[6] This statement appears to conflict with another statement in the 2018 Blue Book with respect to prior law to the effect that the application of section 865(e)(2) to a sale of personal property made by a nonresident attributable to its office or fixed place of business in the United States results in all income from the sale being sourced in the United States. *Id.* at 396–97.

864(c)(5) in the context of section 865(e)(2) and provide that sales of inventory produced outside the United States and sold through an office maintained by the nonresident in the United States must be sourced in the United States in part.

2. Overview of the Proposed Regulations Under Section 865(e)(2)

Section 865(e)(2) sources the amount of income from sales described in section 865(e)(2)(A) to which the exception in section 865(e)(2)(B) does not apply (Section 865(e)(2) Sales) that is determined to be properly allocable to the nonresident's office or other fixed place of business in the United States under the principles of section 864(c)(5)(C) as referenced by section 865(e)(3). In cases where a sale of personal property is not a Section 865(e)(2) Sale, other sourcing provisions continue to apply.

Proposed § 1.865–3(a) sets forth the general rule in section 865(e)(2)(A), and proposed § 1.865–3(b) sets forth the exception in section 865(e)(2)(B) and cross-references the rules of § 1.864–6(b)(3) to determine if a foreign office materially participated in the sale. Proposed § 1.865–3(c) sets forth the rules for determining whether a nonresident has an office or other fixed place of business in the United States by incorporating the principles of § 1.864–7, and whether a sale of personal property is attributable to that office or other fixed place of business in the United States by incorporating the principles of § 1.864–6(b) and (c), as amended.

Proposed § 1.865–3(d) then provides rules for determining the amount of income that is treated as U.S. source; the rules depend on whether the property sold is inventory (including property treated as inventory under section 865(c)(2)) or other personal property of a nonresident sold in a sale attributable to an office or other fixed place of business in the United States of the nonresident. Proposed § 1.865–3(d) provides separate source rules for income from sales of inventory subject to section 865(e)(2), dependent on whether the nonresident produced the inventory (either the default 50/50 method in paragraph (d)(2)(i) or the elective books and records method in paragraph (d)(2)(ii)), or purchased the inventory, 100 percent U.S. source income in paragraph (d)(3). Proposed § 1.865–3(d)(2)(ii) provides the books and records method that a taxpayer can elect to apply in lieu of the default 50/50 method, including the rules for making that election and the records that must be provided to the Commissioner upon request. To the extent income from either type of inventory sale is treated as U.S. source under proposed § 1.865–3(d)(2) or (3), the income will generally be effectively connected with the conduct of a U.S. trade or business under section 864(c)(3).

Proposed § 1.865–3(e) provides a cross reference to the rules in §§ 1.882–4 and 1.882–5, which determine the amount of expenses that are properly allocated and apportioned to gross income effectively connected with the conduct of a trade or business in the United States.

3. The Proposed Rules for Non-Inventory Property

Section 864(c)(2) applies to determine whether U.S. source gain from the sale of non-inventory property and other capital assets by a non-U.S. person is effectively connected with the conduct of a U.S. trade or business. The proposed regulations implement section 865 and provide source rules for determining whether gain is U.S. source for purposes of section 864(c)(2).

In the case of income derived from the sale of depreciable personal property, section 865(c) distinguishes between gain not in excess of depreciation adjustments and gain in excess of depreciation adjustments, and bifurcates the gain not in excess of depreciation adjustments pro rata to depreciation deductions allowable in computing taxable income from sources within the United States and without the United States. Section 865(c)(1). Gain in excess of depreciation is sourced as if such property were inventory property. Section 865(c)(2) and proposed § 1.865–3(d)(4). See section II.A.4 of this Explanation of Provisions for discussion of the sourcing of inventory property. The legislative history of section 865(c), which was enacted at the same time as section 865(e)(2), indicates that Congress intended to create a special rule for depreciable personal property to source the income derived from the sale of depreciable personal property, to the extent of prior depreciation deductions, under a recapture principle. Under this rule, gain from the sale of depreciable personal property, to the extent of prior depreciation deductions, is sourced within the United States in proportion to the extent of the depreciation deductions that were previously allocated against U.S. source income. On the other hand, the gain, to the extent of prior depreciation deductions, is sourced without the United States in proportion to the extent of the depreciation deductions that were previously allocated against foreign source income. *See* H.R. Rep. No. 99–426, at 364 (1985); S. Rep. No. 99–313, at 331–32 (1986); Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986 (Pub. L. 99–514), JCS–10–87, at 63 (1987). Thus, Congress intended to apply the recapture rule to source gain, not in excess of depreciation, from a sale of depreciable personal property (as opposed to sourcing that gain based on the location of the taxpayer's office).

Consistent with this legislative history, the Treasury Department and the IRS have determined that, to the extent a nonresident previously allocated depreciation deductions against foreign source income, in the event of a sale of such property through an office or other fixed place of business in the United States, the associated gain is not ''properly allocable'' to an office or other fixed place of business in the United States under the principles of section 864(c)(5), and therefore to such extent the sale (and gain) is not attributable to a nonresident's office or other fixed place of business in the United States under section 865(e)(2). Therefore, in the case of income subject to section 865(e)(2) from the sale of depreciable personal property, the amount of gain, not in excess of depreciation deductions, that is allocable to the nonresident's office or fixed place of business within the United States is the amount of gain that would be attributable to United States depreciation deductions under the recapture rule of section 865(c)(1). To the extent the gain exceeds prior U.S. and non-U.S. depreciation deductions, sections 865(c)(2) and 865(e)(2) apply and source that gain as if the property were inventory. Thus, the residual gain in excess of depreciation deductions is sourced under the rules of section 865(e)(2) as described in proposed § 1.865–3(d)(2) (for produced inventory, the 50/50 method and the books and records method) and (d)(3) (for purchased inventory, 100 percent U.S. source income).

4. The Proposed Rules for Inventory

With respect to inventory purchased and sold by a nonresident in a sale attributable to an office or other fixed place of business in the United States and subject to section 865(e)(2), none of the income from the sale is attributable to production activity, and therefore, unless the exception in section 865(e)(2)(B) applies, all of the income from the sale is properly allocable to the office or other fixed place of business in the United States. Thus, the proposed regulations clarify that in these cases section 865(e)(2) causes all of the gross

income derived from the disposition to be U.S. source. See § 1.865–3(d)(3).

With respect to inventory produced and sold by a nonresident in a sale attributable to an office or other fixed place of business in the United States and subject to section 865(e)(2), the Treasury Department and the IRS have determined that the disposition continues to give rise to gross income that is partly allocable to the nonresident's office or other fixed place of business in the United States (representative of the sales activity with respect to the transaction) and sourced under section 865(e)(2), with the remainder allocable to production activity and sourced under section 863(b). Therefore, these proposed regulations provide a rule specifically for Section 865(e)(2) Sales involving inventory produced by the nonresident that distinguishes generally between sales and production activities in determining the source of the income from sales of produced inventory and is consistent with the overall structure of subchapter N, part I (sections 861–865).

The Treasury Department and the IRS understand that Congress intended for the source rules to ''operate clearly without the necessity for burdensome factual determinations.'' H.R. Rep. No. 99–426, at 360 (1985). Additionally, it is noteworthy that the ''principles'' of section 864(c)(5)(C), rather than the exact rules thereof, apply in the section 865(e)(2) context. Finally, the Treasury Department and the IRS are mindful of the fact that section 865(e)(2) was not modified by the Act. Before the Act, by applying the principles of current § 1.863–3(b) to determine the amount of income allocable to the office or other fixed place of business in the United States, the 50/50 method allowed for a 50 percent U.S. source result with respect to sales of produced inventory.

Based on the foregoing considerations, these proposed regulations continue to apply the 50/50 method as the general rule to treat 50 percent of a nonresident's income with respect to produced inventory sold through an office or other fixed place of business in the United States as U.S. source income attributable to the sales activity of the office maintained by the nonresident. The remaining 50 percent of the income is allocated or apportioned between U.S. and foreign sources by applying section 863(b) and the regulations thereunder (as amended by these proposed regulations) based upon the location of production activities. Thus, where inventory is produced entirely outside the United States and sold through a U.S. sales office in a transaction subject to section 865(e)(2), 50 percent of the gross income is U.S. source income allocable to the U.S. sales office or other fixed place of business, and the remaining 50 percent is foreign source income.

In prescribing the 50/50 method for dividing gross income from Section 865(e)(2) Sales between production and sales activity, the Treasury Department and the IRS appreciate that this method may not correspond precisely to the economic genesis of the gross income with respect to the sales and production activity involved. Nevertheless, the Treasury Department and the IRS have determined that this is an appropriate and administrable way to give effect to the principles of section 864(c)(5) in allocating income to the office or other fixed place of business in the United States (and focusing on sales activity) when applying section 865(e)(2). First, the 50/50 method has historically been recognized as a reasonable method for allocating income between production and sales activity. Before the Act, section 863(b) specified that income from Section 863(b)(2) Sales ''be treated as derived partly from sources within and partly from sources without the United States,'' and imposed no standard for allocating or apportioning the income. As discussed, the 50/50 method was a commonly used and well-understood sourcing method that ensured some income was allocated or apportioned to sales activity and some to production activity under section 863(b). For example, in 1984 the Treasury Department stated that ''[g]enerally, [income derived from the manufacture and sale of property] is allocated one-half on the basis of the place of manufacture and half on the basis of the place of sale.'' Treasury Department, Tax Reform for Fairness, Simplicity, and Economic Growth, Nov. 1984 at 364. The House, Senate, and Conference Committees each stated with respect to the TRA that ''[under the 50/50 method], half of such income generally is sourced in the country of manufacture, and half of the income is sourced on the basis of the place of sale.'' H.R. Rep. No. 99–426, at 359 (1985); S. Rep. No. 99–313, at 329 (1986); H.R. Rep. No. 99–841, at 917 (1986) (''Conf. Rep.''). Finally, the staff of the Joint Committee on Taxation has referred to the 50/50 method as the ''production/marketing split'' and stated that under this method ''50 percent of such income generally is attributed to the place of production.'' Joint Committee on Taxation, Factors Affecting International Competitiveness of the United States, JCS–6–91, at 148–149 (1991). Second, the 50/50 method was the most administrable of the permissible means of applying section 865(e)(2) through the application of section 864(c)(5)(C) and current § 1.864–6(c)(2) before the Act. Therefore, these proposed regulations adopt the 50/50 method as the default method for allocating or apportioning gross income attributable to Section 865(e)(2) Sales between sources within and without the United States.

Nevertheless, the Treasury Department and the IRS are aware that some taxpayers may be able to more precisely allocate or apportion their gross income between sales and production activities based on their books of account. Taxpayers, at their election, have historically used such a ''books and records'' method under current § 1.863–3(b)(3) to allocate or apportion their gross income from sales of inventory between production and sales activities. Therefore, as an elective alternative to the default 50/50 method, taxpayers may continue to use a books and records method as provided in these proposed regulations. However, the proposed regulations include more detailed guidance regarding the requirements that must be met before a taxpayer will be permitted to use this method.

A taxpayer electing the books and records method must prepare and maintain records that are in existence when its return is filed regarding the allocation of gross income between sales and production activities in its books of account and indicate in a statement attached to its tax return that it elects to apply this method. As part of its records that exist when its return is filed, the taxpayer must include an explanation of how such allocation clearly reflects the taxpayer's income from production and sales activities under the principles of section 482. The Treasury Department and the IRS intend the taxpayer's explanation to allow a potential examiner to have a roadmap for understanding the method by which the taxpayer determined the allocation of gross income between the U.S. sales activities and the foreign production activities, respectively. The use of section 482 in the proposed regulations is not intended to imply that the taxpayer's explanation must satisfy the documentation requirements of section 6662(e) and § 1.6662–6(d). The taxpayer must make available its books and records for both its sales activities and its production activities and the related explanation upon request of the Commissioner. If a taxpayer fails to satisfy these requirements in full, the default 50/50 method will apply.

These proposed regulations, however, do not also provide for an elective IFP method as allowed by current § 1.863–3(b)(2). The Treasury Department and the IRS have determined that this method is applicable only in very narrow circumstances when an IFP exists and therefore has rarely been elected by taxpayers in practice. Any taxpayer that wishes to continue using an IFP could generally continue to reach a similar result by electing the books and records method and basing the allocation or apportionment in its books and records on the IFP. Nevertheless, the Treasury Department and the IRS request comments on whether the IFP or any other methods for allocating or apportioning gross income attributable to Section 865(e)(2) Sales between sources within and without the United States should be included in these regulations.

B. Modification of Current § 1.864–6(c)(2) To Ensure Consistency With § 1.865–3

Section 864(c)(4)(B)(iii) generally provides that income derived from the sale of inventory (outside the United States) by a non-U.S. person through an office or other fixed place of business in the United States may be effectively connected income, notwithstanding that it would be foreign source income under the title passage rules in § 1.861–7(c). It provides an exception for inventory sold for use or consumption outside the United States, similar to the exception in section 865(e)(2)(B).

Accordingly, sections 864(c)(4)(B)(iii) and 865(e)(2), as a statutory matter, appear to overlap in their treatment of sales of inventory by non-U.S. persons through an office or other fixed place of business in the United States. This was not the case, however, in 1986 because Congress removed section 864(c)(4)(B)(iii) from the Code when section 865(e)(2) was added. The Tax Reform Act of 1986, Public Law 99–514 (1986) (section 1211(a) added section 865, while section 1211(b)(2) removed section 864(c)(4)(B)(iii)). Two years later, however, in the Technical and Miscellaneous Revenue Act of 1988 (''TAMRA 1988''), Congress added section 864(c)(4)(B)(iii) back to the Code, with the Senate Report to TAMRA 1988 explaining that the provision was reinstated because it ''is necessary to ensure that foreign persons who have a substantial presence in the United States, who may be treated as U.S. residents for source rule purposes but as nonresidents for general purposes, are taxed on income derived from sales of inventory property.'' S. Rep. No. 100–445, at 239 (1988); see also Joint Committee on Taxation, Description of the Technical Correction Act of 1988, JCS–10–88, at 250 (1988); TAMRA 1988 (section 1012(d)(7) restored section 864(c)(4)(B)(iii)).

The Treasury Department and the IRS have thus determined that where both provisions potentially could apply, as in the case of foreign corporations and most nonresident alien individuals, section 865(e)(2) takes precedence over section 864(c)(4)(B)(iii) because section 865(e)(2) applies ''[n]otwithstanding any other provisions of this part.'' Consistent with the TAMRA 1988 legislative history, the Treasury Department and the IRS have determined that section 864(c)(4)(B)(iii) applies solely to nonresident alien individuals (defined in section 7701(b)) who under section 865(g)(1) have a tax home (as defined in section 911(d)(3)) in the United States (and whose inventory sales thus would not be subject to section 865(e)(2) as those individuals would not be ''nonresidents'' under section 865(g)(1)(B)). Note that these nonresident alien individuals would be subject to section 864(c)(4)(B)(iii) and section 864(c)(5) only with respect to income from inventory sales that is determined to be foreign source after application of sections 861(a)(6), 862(a)(6), and 863(b) pursuant to section 865(b). Thus, for example, a nonresident alien individual engaged in a U.S. trade or business, with a tax home in the United States, who purchases inventory outside the United States and resells inventory attributable to a U.S. office (with title passing offshore) would have foreign source income under section 862(a)(6) (by reference from section 865(b)), but that foreign source income would then be subject to section 864(c)(4)(B)(iii) and section 864(c)(5) to determine the amount of the individual's foreign source effectively connected income.

Although the scope of section 864(c)(4)(B)(iii) is narrow, the Treasury Department and the IRS have determined that income from sales of inventory by these individuals should be taxable as effectively connected income to the same extent as if inventory sales by these individuals were governed by section 865(e)(2), depending on whether the inventory was either purchased abroad or produced abroad. Section 1.864–6(c)(2)is therefore modified so that it applies exclusively to this distinct class of nonresident aliens, those with a tax home in the United States who are not covered under section 865(e)(2). Further, in order for these individuals to be subject to tax to the same extent as other nonresident taxpayers under section 865(e)(2), the proposed regulations remove any current references in § 1.864–6(c)(2) to section 863(b) and § 1.863–3, thereby clarifying that the rules of section 863(b) and § 1.863–3 do not apply in the context of section 864(c)(4)(B)(iii) to treat inventory sales as exclusively giving rise to foreign source income if the inventory sold was produced exclusively outside of the United States. The proposed regulations do not modify the treatment of sales by these individuals of intangible personal property described in § 1.864–5(b)(1) or of stock or securities described in § 1.864–5(b)(2), which continue to be governed by § 1.864–6(c)(1). Current and proposed § 1.864–6(c)(2) implement the rule in section 864(c)(5)(C) that applies solely to sales of personal property described in section 864(c)(4)(B)(iii) and § 1.864–5(b)(3).

These proposed regulations also may impact the determination of qualified business income for purposes of section 199A. Section 199A(c)(3)(A)(i) provides that ''qualified items of income, gain, deduction, and loss'' under section 199A(c)(3) are those items that are, among other things, effectively connected with the conduct of a trade or business in the United States within the meaning of section 864(c) (subject to certain modifications). The Treasury Department and the IRS continue to study the application of section 864(c) in the context of section 199A, and request comments on this topic.

C. U.S. Income Tax Treaties

The Treasury Department and the IRS are aware that under U.S. income tax treaties, the business profits of foreign treaty residents may be taxable in the United States only if the profits are attributable to a permanent establishment in the United States. With respect to taxpayers entitled to the benefits of an income tax treaty, the amount of profits attributable to a U.S. permanent establishment will not be affected by these regulations.

Proposed Applicability Date

The regulations are proposed to apply to taxable years ending on or after December 23, 2019. As proposed, the regulations will permit taxpayers to apply the rules therein in their entirety for taxable years beginning after December 31, 2017, and before these regulations apply.

In addition, taxpayers may rely on the rules in the proposed regulations for taxable years beginning after December 31, 2017, and before the final regulations are applicable, provided that the taxpayer and persons that are related

(within the meaning of section 267 or 707) to the taxpayer apply the proposed regulations in their entirety. For taxable years before these regulations apply, the IRS may, where appropriate, challenge certain positions described in this preamble, including that following the amendment to section 863(b)(2) income earned by nonresidents from sales of personal property produced outside the United States and sold through an office or other fixed place of business in the United States is 100 percent foreign source.

Special Analyses

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (''OMB'').

I. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. Although data are not readily available to assess the number of small entities potentially affected, any economic impact of these regulations is unlikely to be significant. Specifically, the regulations in §§ 1.863–1 and 1.863–3 (with conforming changes in cross-referencing regulations) implement the statutory change made to section 863(b) by the Act. This change affects sales of inventory property by any taxpayer where the taxpayer produces the inventory (in whole or in part) within the United States and sells that inventory without the United States, or vice versa. The change in sourcing for those entities is attributable to the change in section 863(b) made by the Act. Proposed §§ 1.863–1 and 1.863–3 merely implement the statutory change with limited additional guidance. The Treasury Department and the IRS do not anticipate that any differences between the changes in section 863(b) made by the Act and the changes in proposed §§ 1.863–1 and 1.863–3 made by these proposed regulations will have a significant economic impact on a substantial number of small entities. Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact of this rule on small entities.

The other regulations in this publication (other than changes to ensure consistency with section 863(b)) are the proposed regulations in §§ 1.864–6 and 1.865–3. These proposed regulations solely affect non-U.S. taxpayers, which are not subject to the Regulatory Flexibility Act.

Pursuant to section 7805(f), this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

II. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $154 million. These proposed regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

III. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under **ADDRESSES**. The Treasury Department and the IRS request comments on all aspects of the proposed rules. See also sections I.C, II.A.4, and II.B of the Explanation of Provisions (requesting specific comments related to the suitability of using ADS, other potential approaches to determine the location or existence of production activity, or other modifications to § 1.863–3 that may be appropriate; related to whether there are other suitable methods for allocating or apportioning income attributable to Section 865(e)(2) Sales between U.S. and foreign sources; and related to the impact of these proposed regulations on the determination of qualified business income for purposes of section 199A, respectively). All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of the proposed regulations are Brad McCormack and Anisa Afshar of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by:

■ 1. Revising the entries for §§ 1.863–1, 1.863–2, 1.863–3, and 1.863–8.

■ 2. Adding an entry for § 1.865–3 in numerical order.

■ 3. Revising the entries for §§ 1.937–2, 1.937–3, and 1.1502–13.

The revisions and addition read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.863–1 also issued under 26 U.S.C. 863(a).

Section 1.863–2 also issued under 26 U.S.C. 863(a).

Section 1.863–3 also issued under 26 U.S.C. 863(a).

* * * * *

Section 1.863–8 also issued under 26 U.S.C. 863(a).

* * * * *

Section 1.865–3 also issued under 26 U.S.C. 865(j).

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Section 1.937–2 also issued under 26 U.S.C. 937(b).

Section 1.937–3 also issued under 26 U.S.C. 937(b).

* * * * *

Section 1.1502–13 also issued under 26 U.S.C. 1502.

* * * * *

■ **Par. 2.** Section 1.863–1 is amended as follows:

■ 1. In paragraph (a):

■ i. Revising the third sentence.

■ ii. Removing ''§ 1.863–3(g)'' and adding in its place ''§ 1.863–3(f)''.

■ 2. In paragraph (b)(1):

■ i. Removing '', must be allocated between sources within and without the United States based on the fair market value of the product at the export terminal (as defined in paragraph (b)(3)(iii) of this section)'' from the first sentence and adding in its place ''shall be treated as income from sources within the United States''.

■ ii. Revising the second sentence.

■ iii. Removing the third, fourth, and fifth sentences.

■ 3. Removing paragraphs (b)(1)(i) and (ii).

■ 4. In paragraph (b)(2):

■ i. Removing ''prior to export terminal'' from the heading and adding in its place ''activities''.

■ ii. Removing ''before the relevant product is shipped from the export terminal'' from the first sentence.

■ 5. Removing ''§§ 1.1502–13 or 1.863–3(g)(2)'' from paragraph (b)(3)(i) and adding in its place ''§ 1.1502–13 or § 1.863–3(f)(2)''.

■ 6. Removing ''to or from the export terminal'' from the third sentence of paragraph (b)(3)(ii).

■ 7. Removing paragraph (b)(3)(iii).

■ 8. In paragraph (b)(6), removing ''this paragraph (b)'' from the first sentence and adding in its place ''paragraph (b)(2) of this section''.

■ 9. Designating *Examples 1, 2, 3, 4,* and *5* of paragraph (b)(7) as paragraphs (b)(7)(i) through (v).

■ 10. Revising newly designated paragraphs (b)(7)(i) through (iv).

■ 11. In newly designated paragraph (b)(7)(v):

■ i. Removing ''*Example 1*'' from the first sentence and adding ''paragraph (b)(7)(i) of this section (*Example 1*)''.

■ ii. Removing ''country'' from the first sentence and adding in its place ''Country''.

■ iii. Removing ''Mine's'' from the seventh sentence and adding in its place ''Mines'''.

The revisions read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

(a) * * * See also section 865(b) for rules for sourcing income from the sale of inventory property, within the meaning of section 865(i)(1) (inventory), generally, and section 865(e)(2) and § 1.865–3 for sourcing income from the sale of personal property (including inventory) by a nonresident that is attributable to the nonresident's office or other fixed place of business in the United States. * * *

(b) * * *

(1) * * * Notwithstanding any other provision of this part, except to the extent provided in paragraph (b)(2) of this section or § 1.865–3, gross receipts from the sale within the United States of products derived from the ownership or operation of any farm, mine, oil or gas well, other natural deposit, or timber outside the United States shall be treated as attributable to production activities without the United States and therefore treated as income from sources without the United States.

* * * * *

(7) * * *

(i) *Example 1. No additional production.* U.S. Mines, a domestic corporation, operates a copper mine and mill in Country X. U.S. Mines extracts copper-bearing rocks from the ground and transports the rocks to the mill where the rocks are ground and processed to produce copper-bearing concentrate. The concentrate is transported to a port where it is dried in preparation for export, stored, and then shipped to purchasers in the United States. Because there is no additional production, paragraph (b)(3)(ii) of this section does not apply, and under paragraph (b)(1) of this section, gross receipts from the sale of the concentrate will be from sources without the United States.

(ii) *Example 2. No additional production.* U.S. Gas, a domestic corporation, extracts natural gas within the United States, and transports the natural gas to a Country X port where it is liquefied in preparation for shipment. The liquefied natural gas is then transported via freighter and sold without additional production activities in a foreign country. Liquefaction of natural gas is not an additional production activity because liquefaction prepares the natural gas for transportation. Therefore, under paragraph (b)(1) of this section, gross receipts from the sale of the liquefied natural gas will be from sources within the United States.

(iii) *Example 3. Production in United States.* U.S. Gold, a domestic corporation, mines gold in Country X, produces gold jewelry using production assets located in the United States, and sells the jewelry in Country Y. Assume that the fair market value of the gold before the additional production activities in the United States is $40x and that U.S. Gold ultimately sells the gold jewelry in Country Y for $100x. Under paragraph (b)(2) of this section, $40x of U.S. Gold's gross receipts will be allocated to sources without the United States, and the remaining $60x of gross receipts will be U.S. source under § 1.863–3.

(iv) *Example 4. Production in United States.* U.S. Oil, a domestic corporation, extracts oil in Country X, transports the oil via a pipeline to the United States, refines the oil using production assets located in the United States, and sells the refined product in the United States to unrelated persons. Assume that the fair market value of the oil before refinement in the United States is $80x and U.S. Oil ultimately sells the refined product for $100x. Under paragraph (b)(2) of this section, $80 of gross receipts will be allocated to sources without the United States, and the remaining $20 of gross receipts will be allocated to sources within the United States.

* * * * *

■ **Par. 3.** Section 1.863–2 is amended as follows:

■ 1. Removing ''(and that is treated as derived partly from sources within and partly from sources without the United States)'' from the third sentence of paragraph (a) and adding a colon at the end of the paragraph.

■ 2. Revising paragraph (b).

The revision reads as follows:

§ 1.863–2 Allocation and apportionment of taxable income.

* * * * *

(b) *Determination of source of taxable income.* Income treated as derived from sources partly within and partly without the United States under paragraph (a) of this section may be allocated or apportioned to sources within and without the United States pursuant to §§ 1.863–1, 1.863–3, 1.863–4, 1.863–8, and 1.863–9. To determine the source of certain types of income described in paragraph (a)(1) of this section, see § 1.863–4. To determine the source of gross income described in paragraph (a)(2) of this section, see § 1.863–1 for natural resources and § 1.863–3 for all other sales of inventory property. Section 1.865–3 may apply instead of the provisions in this part to source gross income from sales of personal property (including inventory property) by nonresidents attributable to an office or other fixed place of business in the United States. To determine the source of income partly from sources within a possession of the United States, including income described in

paragraph (a)(3) of this section, see § 1.863–3(e).

* * * * *

■ **Par. 4.** Section 1.863–3 is amended as follows:

■ 1. Revising paragraphs (a) and (b).

■ 2. Removing ''and sales activity'' from the heading in paragraph (c).

■ 3. In paragraph (c)(1)(i)(A):

■ i. Removing ''(g)(2)(ii)'' and adding in its place ''(f)(2)(ii)'';

■ ii. Removing ''the income attributable to production activity'' and adding in its place ''gross income''; and

■ iii. Removing ''(c)(1)(ii)'' and adding in its place ''(c)(2)''.

■ 4. Removing ''(g)(2)(ii)'' from paragraph (c)(1)(i)(B) and adding in its place ''(f)(2)(ii)''.

■ 5. Removing ''within the United States and within foreign countries'' from the heading to paragraph (c)(1)(ii) and adding in its place ''within and without the United States''.

■ 6. Removing ''income attributable to the taxpayer's production activity'' from paragraph (c)(1)(ii)(A) and adding in its place ''gross income''.

■ 7. In paragraph (c)(1)(iii):

■ i. Removing ''(c)(1)'' from the first and second sentences and adding in its place ''(c)'';

■ ii. Removing ''by manipulating the formula described in paragraph (c)(1)(ii)(A) of this section'';

■ iii. Removing ''production income'' and adding in its place ''gross income''; and

■ iv. Removing ''income from production activity'' and adding in its place ''gross income''.

■ 8. Removing paragraph (c)(2) and the paragraph designation and heading for (c)(1);

■ 9. In paragraphs (c)(i) through (iv), redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(c)(i)	(c)(1)
(c)(i)(A)	(c)(1)(i)
(c)(i)(B)	(c)(1)(ii)
(c)(i)(C)	(c)(1)(iii)
(c)(ii)	(c)(2)
(c)(ii)(A)	(c)(2)(i)
(c)(ii)(B)	(c)(2)(ii)
(c)(iii)	(c)(3)
(c)(iv)	(c)(4)

■ 10. Revising newly redesignated paragraph (c)(2)(ii).

■ 11. In newly redesignated paragraph (c)(4):

■ i. In the introductory text, removing ''(c)(1)'' and adding in its place ''(c)''; and

■ ii. Designating *Examples 1, 2,* and *3* as paragraphs (c)(4)(i) through (iii).

■ 12. In newly designated paragraph (c)(4)(i):

■ i. Removing ''production'' from the heading and adding in its place ''gross''; and

■ ii. Redesignating paragraphs (c)(1)(i)(i) and (ii) as paragraphs (c)(4)(i)(A) and (B).

■ 13. In newly redesignated paragraph (c)(4)(i)(A), removing the ninth sentence.

■ 14. In newly redesignated paragraph (c)(4)(i)(B):

■ i. Removing ''production'', ''one half of'', and ''or $6,'' from the first sentence;

■ ii. Removing ''production'' from the second sentence; and

■ iii. In the last sentence, removing ''$2'' and ''$6'' and adding in their places ''$4'' and ''$12'', respectively.

■ 15. In newly designated paragraph (c)(4)(ii):

■ i. Removing ''*Example 1*'' from the first sentence and adding in its place ''in paragraph (c)(4)(i)(A) of this section (*Example 1*)''; and

■ ii. Removing ''from production activity'' from the second sentence.

■ 16. In newly designated paragraph (c)(4)(iii), redesignating paragraphs (c)(4)(iii)(i) and (ii) as paragraphs (c)(4)(iii)(A) and (B).

■ 17. In newly redesignated paragraph (c)(4)(iii)(A):

■ i. Removing ''*Example 1*'' from the first sentence and adding in its place ''in paragraph (c)(4)(i)(A) of this section (*Example 1*)''; and

■ ii. Removing ''(c)(1)(ii)'' and ''production income'' from the fourth sentence and adding in their places ''(c)(2)'' and ''gross income'', respectively.

■ 18. In newly redesignated paragraph (c)(4)(iii)(B):

■ i. Removing ''(c)(1)(ii)(A)'' from the first sentence and adding in its place ''(c)(2)(i)''; and

■ ii. Removing ''production income'' from the second sentence and adding in its place ''gross income''.

■ 19. Revising paragraph (d).

■ 20. Removing paragraph (e).

■ 21. Redesignating paragraph (f) as paragraph (e).

■ 22. Revising newly redesignated paragraphs (e)(1) and (2) and (e)(3)(i).

■ 23. Removing ''(f)(3)(ii)'' from newly redesignated paragraph (e)(3)(ii)(B) introductory text and adding in its place ''(e)(3)(ii)''.

■ 24. Revising newly redesignated paragraph (e)(3)(ii)(C)(*1*).

■ 25. Removing newly redesignated paragraph (e)(4).

■ 26. Further redesignating paragraph (e)(3)(iii) as paragraph (e)(4).

■ 27. In newly redesignated paragraph (e)(4):

■ i. Removing ''(f)(3)(ii)'' from the introductory text and adding in its place ''(e)(3)(ii)''; and

■ ii. Designating *Examples 1* and *2* as paragraphs (e)(4)(i) and (ii).

■ 28. In newly designated paragraph (e)(4)(i), redesignating paragraphs (e)(4)(i)(i) and (ii) as paragraphs (e)(4)(i)(A) and (B).

■ 29. In newly designated paragraph (e)(4)(ii), redesignating paragraphs (e)(4)(ii)(i) and (ii) as paragraphs (e)(4)(ii)(A) and (B).

■ 30. In newly redesignated paragraph (e)(4)(ii)(A), removing ''*Example 1*'' and adding ''paragraph (e)(4)(i)(A) of this section (*Example 1*)''.

■ 31. Removing ''(f)'' from newly redesignated paragraph (e)(5) and adding in its place ''(e)'' and removing ''(g)'' and adding in its place ''(f)''.

■ 32. Removing newly redesignated paragraph (e)(6).

■ 33. Redesignating paragraph (g) as paragraph (f).

■ 34. In newly redesignated paragraph (f)(1), removing ''(g)(2)'' and adding in its place ''(f)(2)''.

■ 35. In newly redesignated paragraph (f)(2)(ii), removing ''(g)(2)(i)'' and adding in its place ''(f)(2)(i)'' and removing ''(c)(1)(ii)(B)'' and adding in its place ''(c)(2)(ii)''.

■ 36. Removing newly redesignated paragraph (f)(2)(iv).

■ 37. In newly redesignated paragraph (f)(3):

■ i. Removing ''(g)'' from the introductory text and adding in its place ''(f)''; and

■ ii. Designating *Examples 1* and *2* as paragraphs (f)(3)(i) and (ii).

■ 38. In newly designated paragraph (f)(3)(ii):

■ i. Removing ''*Example 1*'' from the first sentence and adding in its place ''paragraph (f)(3)(i) of this section (*Example 1*)'';

■ ii. Removing ''these regulations'' in the fourth sentence and adding in its place ''this section'';

■ iii. Removing the fifth sentence; and

■ iii. Removing ''(1)'' from the last sentence.

■ 39. Redesignating paragraph (h) as (g) and revising newly redesignated paragraph (g).

The revisions read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

(a) *In general*—(1) *Scope.* Subject to the rules of § 1.865–3, paragraphs (a) through (d) of this section apply to determine the source of income derived from the sale of inventory property (inventory) that a taxpayer produces (in whole or in part) within the United States and sells without the United

States, or that a taxpayer produces (in whole or in part) without the United States and sells within the United States (Section 863(b)(2) Sales). See section 865(i)(1) for the definition of inventory. Paragraph (b) of this section provides that the source of gross income from the sale or exchange of inventory in Section 863(b)(2) Sales is based solely on the production activities with respect to the inventory. Paragraph (c) of this section describes how to determine source based on production activity, including where inventory is produced partly within the United States and partly without the United States. Paragraph (d) of this section determines taxable income from Section 863(b)(2) Sales. Paragraph (e) of this section applies to determine the source of certain income derived from a possession of the United States. Paragraph (f) of this section provides special rules for partnerships for all sales subject to §§ 1.863–1 through 1.863–3. Paragraph (g) of this section provides applicability dates for the rules in this section.

(2) *Cross references.* To determine the source of income derived from the sale of personal property (including inventory) by a nonresident that is attributable to the nonresident's office or other fixed place of business in the United States under section 865(e)(2), the rules of § 1.865–3 apply, and the rules of this section do not apply. To determine the source of income from sales of property produced by the taxpayer, when the property is either produced in whole or in part in space or on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States (in international water), or is sold in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8.

(b) *Sourcing based solely on production activities.* Subject to the rules of § 1.865–3, all gain, profit, and income derived from Section 863(b)(2) Sales is allocated and apportioned solely on the basis of the production activities with respect to the inventory.

(c) * * *

(2) * * *

(ii) *Adjusted basis of production assets*—(A) *In general.* For purposes of paragraph (c)(2)(i) of this section, the adjusted basis of an asset is determined by using the alternative depreciation system under section 168(g)(2). The adjusted basis of all production assets for purposes of paragraph (c)(2)(i) of this section is determined as though such production assets were subject to the alternative depreciation system set forth in section 168(g)(2) for the entire period that such property has been in service. The adjusted basis of the production assets is determined without regard to the election to expense certain depreciable assets under section 179 and without regard to any additional first-year depreciation provision (for example, sections 168(k), 168(l), and 168(m), and former sections 1400L(b) and 1400N(d)). The average adjusted basis is computed by averaging the adjusted basis of the asset at the beginning and end of the taxable year, unless by reason of material changes during the taxable year such average does not fairly represent the average for such year. In this event, the average adjusted basis is determined upon a more appropriate basis.

(B) *Production assets used to produce other property.* If a production asset is used to produce inventory sold in Section 863(b)(2) Sales and also used to produce other property during the taxable year, the portion of its adjusted basis that is included in the fraction described in paragraph (c)(2)(i) of this section will be determined under any method that reasonably reflects the portion of the asset that produces inventory sold in Section 863(b)(2) Sales. For example, the portion of such an asset that is included in the formula may be determined by multiplying the asset's average adjusted basis by a fraction, the numerator of which is the gross receipts from sales of inventory from Section 863(b)(2) Sales produced by the asset, and the denominator of which is the gross receipts from all property produced by that asset.

* * * * *

(d) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (c) of this section, the taxpayer must properly allocate and apportion under §§ 1.861–8 through 1.861–14T and 1.861–17 its expenses, losses and other deductions to its respective amounts of gross income from sources within and without the United States from its Section 863(b)(2) Sales.

(e) *Income partly from sources within a possession of the United States*—(1) *In general.* This paragraph (e) relates to certain sales that give rise to gains, profits, and income that are treated as derived partly from sources within the United States and partly from sources within a possession of the United States (Section 863 Possession Sales). This paragraph (e) applies to determine the source of income derived from the sale of inventory produced (in whole or in part) by the taxpayer within the United States and sold within a possession, or produced (in whole or in part) by a taxpayer in a possession and sold within the United States (Possession Production Sales). It also applies to determine the source of income derived from the purchase of personal property within a possession of the United States and its sale within the United States (Possession Purchase Sales). A taxpayer subject to this paragraph (e) must apportion gross income from Section 863 Possession Sales under paragraph (e)(2) of this section (in the case of Possession Production Sales) or using the business activity method described in paragraph (e)(3)(i) of this section (in the case of Possession Purchase Sales). The source of gross income from each type of activity from Possession Purchase Sales must then be determined under paragraph (e)(3)(ii) of this section. The source of taxable income from Possession Production Sales is determined under paragraph (c) of this section. The source of taxable income from Section 863 Possession Sales is determined under paragraph (d) of this section.

(2) *Allocation or apportionment for Possession Production Sales.* The source of gross income from Possession Production Sales is determined under the rules of paragraph (c) of this section, except that the term *possession* of the United States is substituted for *foreign country* wherever it appears.

(3) *Allocation or apportionment for Possession Purchase Sales*—(i) *Determination of source of gross income for Possession Purchase Sales.* Gross income from Possession Purchase Sales is allocated in its entirety to the taxpayer's business activity, and is then apportioned between sources within the United States and sources within a possession of the United States under paragraph (e)(3)(ii) of this section.

(ii) * * *

(C) * * *

(*1*) *Sales activity.* The source of the taxpayer's income that is attributable to sales activity will be determined under the provisions of § 1.861–7(c). Notwithstanding any other provision of this part, for rules regarding the source of income when a sale takes place in space or international water, the rules of § 1.863–8 apply, and the rules of this section do not apply except to the extent provided in § 1.863–8.

* * * * *

(g) *Applicability dates.* This section applies to taxable years ending on or after December 23, 2019. However, taxpayers may apply this section in its entirety for taxable years beginning after December 31, 2017, and ending before

December 23, 2019, provided that the taxpayer and persons that are related (within the meaning of section 267 or 707) to the taxpayer apply this section in its entirety.

■ **Par. 5.** Section 1.863–8 is amended as follows:

■ 1. Revising paragraph (b)(3)(ii)(A).

■ 2. In paragraph (b)(3)(ii)(B), removing ''allocable to production activity'' wherever it appears and by removing ''§ 1.863–3(c)(1)'' from the second sentence and adding in its place ''§ 1.863–3(c)''.

■ 3. In paragraph (b)(3)(ii)(C), removing ''allocable to production activity'' wherever it appears and by removing ''§ 1.863–3(c)(1)'' from the fifth sentence and adding in its place ''§ 1.863–3(c)''.

■ 4. Removing paragraph (b)(3)(ii)(D).

■ 5. Designating *Examples 1* through *14* of paragraph (f) as paragraphs (f)(1) through (14).

■ 6. In newly designated paragraphs (f)(1) through (14), removing the period between the second and third level paragraph headings and adding an em-dash in its place.

■ 7. Removing ''*Example 4*'' from newly designated paragraph (f)(4)(i) and adding in its place ''paragraph (f)(4)(i) (*Example 4*)''.

■ 8. Removing ''*Example 4*'' from newly designated paragraph (f)(5)(i) and adding in its place ''paragraph (f)(4)(i) of this section (*Example 4*)''.

■ 9. Revising the first, second, and third sentences of newly designated paragraphs (f)(6)(ii).

■ 10. Removing ''*Example 8*'' from newly designated paragraph (f)(9)(i) and adding in its place ''in paragraph (f)(8)(i) of this section (*Example 8*)''.

■ 11. Removing ''*Example 8*'' from newly designated paragraph (f)(9)(ii) and adding in its place ''paragraph (f)(8)(i) of this section (*Example 8*)''.

■ 12. Revising newly designated paragraph (f)(11)(ii).

■ 13. In paragraph (g)(1), removing ''(C)'' from the first sentence.

■ 14. In paragraph (g)(4) introductory text, removing ''(C)'' from the first sentence.

The revisions read as follows:

§ 1.863–8 Source of income derived from space and ocean activity under section 863(d).

* * * * *

(b) * * *

(3) * * *

(ii) *Sales of property produced by the taxpayer*—(A) *General.* If the taxpayer both produces property and sells such property, the taxpayer must allocate and apportion all gain, profit, and income derived from sales of such property solely on the basis of the production activities with respect to such property, and the source of that income will be determined under paragraph (b)(3)(ii)(B) or (C) of this section. To determine the source of income derived from the sale of personal property (including inventory) by a nonresident that is attributable to the nonresident's office or other fixed place of business in the United States under section 865(e)(2), the rules of § 1.865–3 apply, and the rules of this section do not apply.

* * * * *

(f) * * *

(6) * * *

(ii) *Analysis.* The collection of data and creation of images in space is characterized as the creation of property in space. Because S both produces and sells the data, the source of the gross income from the sale of the data is determined under paragraph (b)(3)(ii) of this section (by reference to § 1.863–3(c)) solely on the basis of the production activities. The source of S's gross income is determined under § 1.863–3(c)(2) because production activities occur both in space and on land. * * *

(11) * * *

(ii) *Analysis.* Because S's rights, title, and interest in the satellite pass to the customer in space, the sale takes place in space under § 1.861–7(c), and the sale transaction is space activity under paragraph (d)(1)(i) of this section. The source of income derived from the sale of the satellite in space is determined under paragraph (b)(3)(ii) of this section (by reference to § 1.863–3(c)) solely on the basis of the production activities with respect to the satellite.

* * * * *

■ **Par. 6.** Section 1.864–6 is amended by revising paragraphs (c)(2) and (3) and adding paragraph (c)(4) to read as follows:

§ 1.864–6 Income, gain, or loss attributable to an office or other fixed place of business in the United States.

* * * * *

(c) * * *

(2) *Special limitation in case of sales of goods or merchandise through U.S. office.* Notwithstanding paragraph (c)(1) of this section, the special rules described in this paragraph (c)(2) apply with respect to a sale of goods or merchandise specified in § 1.864–5(b)(3), to which paragraph (b)(3)(i) of this section does not apply. In the case of a nonresident alien with a tax home within the United States, as defined in section 911(d)(3), the amount of income from the sale of goods or merchandise that is properly allocable to the individual's U.S. office is determined under § 1.865–3(d).

(3) *Examples.* The application of this paragraph (c) may be illustrated by the following examples—

(i) *Example 1.* Nonresident alien individual A, who has a tax home in the United States, manufactures machinery in a foreign country and sells the machinery outside the United States through A's sales office in the United States for use in foreign countries. Title to the property sold is transferred to the foreign purchaser outside the United States, but no office or other fixed place of business of A in a foreign country participates materially in the sale made through its U.S. office. By reason of its sales activities in the United States, A is engaged in business in the United States during the taxable year. During the taxable year, A derives a total income of $250,000x from these sales. Under section 865(b)(2), all of A's income from these sales is foreign source as production occurs outside the United States. Under paragraph (c)(2) of this section, the amount of income that is allocable to A's U.S. office is determined under § 1.865–3(d)(2). The taxpayer does not allocate income from the sale under the books and records method described in § 1.865–3(d)(2)(ii). Thus, 50 percent of A's foreign source income, plus any additional income allocable based on the location of production activities under §§ 1.863–3(b) and 1.865–3(d)(2)(i) (in this case, $0x), is effectively connected for the taxable year with the conduct of A's U.S. trade or business, or $125,000x.

(ii) *Example 2.* Nonresident alien individual B, who has a tax home in the United States, has an office in a foreign country that purchases merchandise and sells it through B's sales office in the United States for use in various foreign countries, with title to the property passing outside the United States. No other office of B participates materially in these sales made through its U.S. office. By reason of its sales activities in the United States, B is engaged in business in the United States during the taxable year. During the taxable year, B derives income of $300,000x from these sales made through its U.S. sales office. Under section 865(b), all of B's income from these sales is foreign source as title to the merchandise passes outside the United States. The amount of income properly allocable to B's US office determined under § 1.865–3(d)(3) is $300,000x.

(iii) *Example 3.* The facts are the same as in paragraph (c)(3)(ii) of this section (*Example 2*), except that B has an office in a foreign country which participates materially in the sales which are made through its U.S. office. The income which is allocable to B's U.S. sales

office is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation.

(4) *Applicability date.* Paragraphs (c)(2) and (3) of this section, to the extent they apply to sales of inventory described in section 864(c)(4)(B)(iii), apply to sales occurring in taxable years ending on or after December 23, 2019. However, taxpayers may apply this section in its entirety for taxable years beginning after December 31, 2017, and ending before December 23, 2019, provided that the taxpayer and persons that are related (within the meaning of section 267 or 707) to the taxpayer apply this section in its entirety.

■ **Par. 7.** Section 1.865–3 is added to read as follows:

§ 1.865–3 Source of income from sales of personal property (including inventory property) by a nonresident attributable to an office or other fixed place of business in the United States.

(a) *In general.* Notwithstanding any other provisions of sections 861 through 865 or the regulations in this part except paragraph (b) of this section, if a nonresident, as defined in section 865(g)(1)(B), maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business (as determined under paragraph (c) of this section) is sourced in the United States in an amount described in paragraph (d) of this section. See section 865(i)(1) for the definition of inventory property.

(b) *Exceptions for inventory property.* Paragraph (a) of this section does not apply with respect to the income derived by a nonresident from any sale of inventory property that is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the nonresident in a foreign country materially participated in the sale. See § 1.864–6(b)(3) to determine whether a foreign office materially participated in the sale and whether the property was destined for foreign use.

(c) *Attribution of a sale to a United States office.* In determining whether a sale of personal property by a nonresident is attributable to an office or other fixed place of business in the United States, the principles of section 864(c)(5)(B) as prescribed in § 1.864–6(b) and (c) apply. The rule in this paragraph (c) applies without regard to whether the property is described in § 1.864–5(b)(3)(iii). In determining whether a nonresident maintains an office or other fixed place of business in the United States, the principles of section 864(c)(5)(A) as prescribed in § 1.864–7 apply, including the rules of paragraph (d) of that section regarding the office or fixed place of business of a dependent agent of the nonresident.

(d) *Amount of income or loss on sale of personal property attributable to a U.S. office*—(1) *In general.* Subject to the special rules described in paragraphs (d)(2), (3), and (4) of this section, the amount of income, gain, or loss from the sale of personal property attributable to an office or other fixed place of business in the United States is determined under § 1.864–6(c)(1).

(2) *Produced inventory property*—(i) *In general.* With respect to income from the sale of inventory property subject to paragraph (a) of this section that is produced by a nonresident, 50 percent of the gross income from such sale is properly allocable to the office or fixed place of business in the United States. The remaining 50 percent of the gross income is allocable to production activities and is sourced in accordance with § 1.863–3 (the ''50/50 method''). However, in lieu of the 50/50 method, a taxpayer may elect to allocate income from the sale of inventory property that is produced by a nonresident under the books and records method described in paragraph (d)(2)(ii) of this section, provided it satisfies all of the requirements described in that paragraph to the satisfaction of the Commissioner. For purposes of this paragraph (d)(2)(i), the term ''produced'' includes created, fabricated, manufactured, extracted, processed, cured, and aged. See section 864(a) and § 1.864–1.

(ii) *Books and records method*—(A) *Method.* A taxpayer may elect to determine the amount of its gross income from the sale of inventory property subject to paragraph (a) of this section and produced by a nonresident that is allocable to production and sales activities for the taxable year based upon its books of account. The taxpayer must establish that the taxpayer, in good faith and unaffected by considerations of tax liability, regularly employs in its books of account a detailed allocation of receipts and expenditures that clearly reflects the amount of the taxpayer's gross income from its inventory sales that is attributable to its sales activities, and gross income from sales that is attributable to its production activities under the principles of section 482. For purposes of this paragraph (d)(2)(ii)(A), section 482 principles will apply as if the office or fixed place of business in the United States were a separate taxpayer from the nonresident (whether or not payments are made between the United States office or other fixed place of business and the nonresident taxpayer's other offices). The gross income allocable to sales activity under this method is treated as properly allocable to the office or other fixed place of business in the United States. The gross income allocable to production activities is sourced in accordance with § 1.863–3.

(B) *Election and reporting rules*—(*1*) *In general.* A taxpayer making an allocation of gross income under the books and records method in paragraph (d)(2)(ii)(A) of this section must satisfy the requirements of paragraphs (d)(2)(ii)(B)(*2*) and (*3*) of this section. Failure to satisfy the requirements in paragraphs (d)(2)(ii)(B)(*2*) and (*3*) in full and to the satisfaction of the Commissioner will result in application of the 50/50 method specified in paragraph (d)(2)(i) of this section.

(*2*) *Required records.* A taxpayer electing the books and records method under paragraph (d)(2)(ii)(A) of this section must prepare and maintain records that are in existence when its return is filed regarding the allocation of gross income between sales and production activities in its books of account. The taxpayer must also prepare an explanation of how such allocation clearly reflects the taxpayer's income from production and sales activities under the principles of section 482. The taxpayer must make available such explanation and records for both the U.S. sales office and the entity or entities that perform the production activities upon request of the Commissioner, generally within 30 days or some other time period as agreed between the Commissioner and the taxpayer.

(*3*) *Disclosure on a tax return.* A taxpayer who chooses to apply the books and records method under paragraph (d)(2)(ii)(A) of this section must indicate in a statement attached to a timely filed return (including extensions) that it elects to apply such method and has prepared the records described in paragraph (d)(2)(ii)(B)(*2*) of this section.

(3) *Purchased inventory property.* With respect to income from the sale of inventory property subject to paragraph (a) of this section that is purchased by the nonresident, the entire income from such sale is properly allocable to the office or other fixed place of business in the United States.

(4) *Depreciable personal property.* With respect to income from the sale of depreciable personal property subject to paragraph (a) of this section—

(i) The gain not in excess of the depreciation adjustments is allocable to

an office or other fixed place of business in the United States to the same extent that the gain would be allocated to sources within the United States under the rules of section 865(c)(1). The remaining gain not in excess of the depreciation adjustments is allocated to sources without the United States in accordance with section 865(c)(1). However, notwithstanding the preceding sentences, if the property was predominantly used in the United States, within the meaning of section 865(c)(3)(B)(i), for a specific year, all of the gain not in excess of depreciation for that year is allocated to sources within the United States.

(ii) The gain in excess of the depreciation adjustments is treated as if such property were inventory and is sourced under paragraph (d)(2) or (3) of this section as applicable.

(e) *Determination of source of taxable income.* For rules allocating and apportioning expenses to income effectively connected with the conduct of a trade or business in the United States, see §§ 1.882–4 and 1.882–5.

(f) *Export trade corporations.* This section is not applicable for purposes of defining an export trade corporation under section 971.

(g) *Applicability date.* This section applies to sales occurring in taxable years ending on or after December 23, 2019. However, taxpayers may apply this section in its entirety for taxable years beginning after December 31, 2017, and ending before December 23, 2019, provided that the taxpayer and persons that are related (within the meaning of section 267 or 707) to the taxpayer apply this section in its entirety.

§ 1.937–2 [Amended]

■ **Par. 8.** Section 1.937–2 is amended by removing ''§ 1.863–3(f)'' from paragraph (d) and adding in its place ''§ 1.863–3(e)''.

§ 1.937–3 [Amended]

■ Par. 9. Section 1.937–3 is amended by removing ''§ 1.863–3(f)'' from paragraph (d) and adding in its place ''§ 1.863–3(e)''.

■ Par. 10. Section 1.1502–13, as proposed to be amended at 83 FR 67490 (December 28, 2018), is further amended by revising paragraph (c)(7)(ii)(N) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(N) *Example (14): Source of income under section 863*—(*1*) *Intercompany sale*—(*i*) *Facts.* S manufactures inventory property solely in the United States, and recognizes $75x of income on sales to B in Year 1. B conducts further production activity on the inventory property solely in Country Y and then sells the inventory property to X in Country Y and recognizes $25x of income on the sale to X, also in Year 1. Title passes from S to B, and from B to X, in Country Y. Assume that applying § 1.863–3 on a single entity basis, including the formula for apportionment of multi-country production activities by reference to the basis of production assets, $10x is treated as foreign source income and $90x is treated as U.S. source income (that is, 10 percent of the production occurred outside the United States and 90 percent occurred within the United States, as measured by the basis of assets used in production activities with respect to the property). Assume further that, on a separate entity basis, S would have $0 of foreign source income and $75x of U.S. source income and all of B's $25x of income would be foreign source income.

(*ii*) *Analysis.* Under the matching rule, both S's $75x intercompany income and B's $25x corresponding income are taken into account in Year 1. In determining the source of S and B's income from the inventory property sales, the attributes of S's intercompany item and B's corresponding item are redetermined to the extent necessary to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation. See paragraph (c)(1)(i) of this section. On a separate entity basis, S would have $75x of U.S. source income because the product would be treated as produced wholly in the United States and sold outside the United States, and B would have $25x of foreign source income because the product would be treated as produced wholly outside the United States and sold outside the United States. On a single entity basis, S and B are treated as divisions of a single corporation, and section 863 applies as if $100x of income were recognized from producing partly in the United States and partly in Country Y and selling in Country Y. This results in $10x of foreign source income and $90x of U.S. source income. Accordingly, under single entity treatment, $15x of B's sales income that would be treated as foreign source income on a separate entity basis is redetermined to be U.S. source income. Under paragraph (c)(1)(i) of this section, attributes are redetermined only to the extent of the $15x necessary to achieve the same effect as if S and B were divisions of a single corporation. Under paragraph (c)(4)(ii) of this section, the redetermined attribute must be allocated between S and B using a reasonable method. In this case, only B would have foreign source income on a separate entity basis, and thus $15x of B's foreign source income must be recharacterized as U.S. source income.

(*2*) *Sale of property reflecting intercompany services or intangibles*—(*i*) *Facts.* S earns $10x of income performing services in the United States for B. B capitalizes S's fees into the basis of inventory property that it manufactures in the United States and sells to an unrelated person in Year 1 at a $90x profit, with title passing in Country Y. Assume that on a single entity basis, $100x is treated as U.S. source income and $0 is treated as foreign source income. Further assume that on a separate entity basis, S would have $10x of U.S. source income, and B would have $90x of U.S. source income, with neither having any foreign source income.

(*ii*) *Analysis.* Under the matching rule, S's $10x income and B's $90x income are taken into account in Year 1. In determining the source of S and B's income, the attributes of S's intercompany item and B's corresponding item are redetermined to the extent necessary to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation, such that section 863 applies as if $100x were earned from manufacturing in the United States and selling in Country Y. Because the results are the same on a single entity basis and a separate entity basis ($100x of U.S. source income and $0x of foreign source income), the attributes are not redetermined under paragraph (c)(1)(i) of this section.

* * * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–27813 Filed 12–23–19; 4:15 pm]

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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. 19–CRB–0014–RM]

Notice of Inquiry Regarding Categorization of Claims for Cable or Satellite Royalty Funds and Treatment of Ineligible Claims

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Royalty Judges (Judges) publish a notice of inquiry regarding categorization of claims for cable or satellite royalty funds and treatment of royalties associated with invalid claims.

DATES: Comments are due no later than January 29, 2020.

ADDRESSES: You may submit comments and proposals, identified by docket number 19–CRB–0014–RM, by any of the following methods:

CRB's electronic filing application: Submit comments and proposals online in eCRB at *https://app.crb.gov/.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/,* and search for docket number 19–CRB–0014–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Each year cable systems and satellite carriers submit royalties to the Copyright Office under the sections 111 and 119 statutory licenses for the retransmission to their subscribers of over-the-air television broadcast signals. 17 U.S.C. 111 and 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air television broadcast signal and who timely filed a claim for royalties with the Copyright Royalty Board. Either the copyright owners may negotiate the terms of a settlement as to the division of the royalty funds or the Judges may conduct a proceeding to determine the distribution of the royalties that remain in controversy. *See* 17 U.S.C. Chapter 8. Eligibility to receive copyright royalties paid by cable systems and satellite carriers is contingent upon the submission of a properly filed claim. *See* 17 U.S.C. 111 and 119.

In 1980, the Copyright Royalty Tribunal (CRT), a predecessor of the Judges, ruled that cable distribution proceedings would be conducted in two phases, determining in Phase I the allocation of cable royalties to specific groups (Phase I/Allocation) and determining in Phase II the distribution of those royalties to individual claimants within each group (Phase II/Distribution). *See In re 1978 Cable Royalty Distribution Determination,* 45 FR 63026, 63027 (Sep. 23, 1980) (1978 Determination) (summarizing a February 14, 1980 ruling by the CRT). In the 1978 Cable Royalty Distribution Proceeding, and in all subsequent Phase I/Allocation proceedings, the division of royalties was accomplished through a categorization of claims that was the product of a *stipulation* among the proposed allocation claimants. These categorizations were adopted by the CRT and its successors by their adoption of the participants' stipulations (subject, on occasion, to minor modifications).[1] The Judges have made it clear that their adoption of the claimants' categories has never constituted a finding by the Judges. *See Memorandum Opinion and Order following Preliminary Hearing on Validity of Claims,* Docket No. 2008–2 CRB 2000–2003 (Phase II), at 14 (Mar. 21, 2013); *id.* (Phase I), 6/11/09 Tr. 41–42 (former Chief Judge Sledge noting that the categories were the result of a ''stipulation'' and ''have never been determined'' or the subject of a ''finding.'').

In the 1978 Proceeding, the CRT also considered a separate issue—whether to address the economic impact of unclaimed funds in Phase I or in Phase II. The CRT stated: ''During Phase I there was some random testimony to the effect that not all eligible claimants had submitted claims. The [CRT] determined that this subject was not appropriate to Phase I, but that it would be considered subsequently in the proceeding. The [CRT] therefore determined that the Phase I allocations to categories should be made *as if* all eligible claimants in each category had filed.'' *1978 Proceeding* at 63042 (emphasis added).

The CRT requested and received further briefing on the legal issues regarding unclaimed funds, and, in Phase II, the CRT ''accorded each claimant the opportunity to present any relevant evidence on this subject . . . [but] [n]o claimant presented any such evidence.'' *Id.* After reviewing the legal briefing, the CRT—without referencing any of the legal points briefed—

[1] The categories into which copyright owners have divided themselves in Phase I cable proceedings have remained largely consistent over time: (1) ''Program Suppliers''—copyright owners of movies and syndicated television programs represented by the Motion Picture Association, Inc. (''MPA'') (formerly the Motion Picture Association of America, Inc. (''MPAA'')); (2) ''Joint Sports Claimants''—copyright owners of live broadcasts of professional and college team sporting events (largely consisting of member teams of the National Football League, National Hockey League, National Basketball Association, Women's National Basketball Association, Office of the Commissioner of Baseball, and National Collegiate Athletic Association); (3) ''Commercial Broadcasters''—copyright owners of broadcast television and radio programming produced by local commercial broadcasters and represented by the National Association of Broadcasters, Inc. (''NAB''); (4) ''Devotional Claimants''—copyright owners of religious broadcast programming produced; (5) ''Public Television'' or ''PBS''—copyright owners of television programs broadcast on public television stations represented by the Public Broadcasting Service; (6) ''Canadian Claimants''—various Canadian copyright owners whose programs are broadcast on Canadian television stations and retransmitted by cable systems located near the U.S./Canada border; (7) ''NPR''—copyright owners of radio programming transmitted by National Public Radio and public radio stations; and (8) ''Music Claimants''—songwriters and music publishers represented by the American Society of Composers, Authors and Publishers (''ASCAP''), Broadcast Music, Inc. (''BMI'') and SESAC, Inc.. *See, e.g., Distribution of 1998 and 1999 Cable Royalty Funds,* Docket No. 2001–8 CARP CD 98–99, 69 FR 3606, 3607 (Jan. 26, 2004); *see also 1989 Cable Royalty Distribution Proceeding,* Docket No. CRT 91–2–89 CD, 57 FR 15286, 15287 (Apr. 27, 1992) ((1) Program Suppliers; (2) Sports; (3) U.S. Noncommercial Television (PBS); (4) U.S. Commercial Television (NAB); (5) Music; (6) Devotional Claimants; (7) Canadian Claimants; (8) Non-Commercial Radio (NPR); and (9) Commercial Radio)).

concluded that it would not consider unclaimed funds in determining Phase I allocations. Specifically, the CRT stated that royalties would be ''allocated to categories of claimants *as if* all eligible claimants in each category had filed valid claims.'' *Id.* (emphasis added). The CRT found that the record before it ''*provid[ed] no objective basis* for redistribution of royalty fees among categories of claimants to[] reflect unclaimed royalties in particular categories,'' and concluded that its disposition of unclaimed royalties constituted an ''*equitable allocation.*'' *Id.* (emphasis added). The CRT further noted that its ruling ''may not necessarily control any subsequent distribution proceeding.'' *Id.*

In a recent proceeding for the Distribution of Cable Royalty Funds (Docket No. 16–CRB–0009 CD (2014–17)), and in the parallel proceeding for the Distribution of Satellite Royalty Funds (Docket No. 16–CRB–0010–SD (2014–17)), the Judges sought input from the participants [2] on the claimant categories to be used in each proceeding. *See Notice of Participants and Order for Preliminary Action to Address Categories of Claims,* Docket No. Docket No. 16–CRB–0009 CD (2014–17), at 2 (Mar. 20, 2019); *Notice of Participants and Order for Preliminary Action to Address Categories of Claims,* Docket No. Docket No. 16–CRB–0010 SD (2014–17), at 2 (Mar. 20, 2019).[3] Instead of stipulating to the definitions of the Allocation Phase categories as they had in past proceedings, the participants filed briefs advocating different category definitions.

Most participants advocated use of the claimant-centric categories that had been used in prior distribution proceedings, arguing that doing so would provide ''efficiency and certainty both in the preparation of evidence . . . and in the ultimate distribution of royalties to all eligible claimants.'' Joint Comments of 2014–17 Cable Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0009–CD (2014–17), at 2 (Apr. 19, 2019); *see also* Joint Comments of 2014–12 Satellite Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0010–SD (2014–17), at 2 (same); *see also generally* Program Suppliers' Brief Regarding Proposed Claimant Group Definitions, Docket No. 16–CRB–0009–CD (2014–17), (Apr. 19, 2019) (proposing that current claimant-centric categories be retained with some modifications); Program Suppliers' Brief Regarding Proposed Claimant Group Definitions, Docket No. 16–CRB–0010–SD (2014–17) (same). These participants describe the effect of their proposed structure as establishing ''a manageably finite number of industry groups, each with the scope and incentive to pursue the interests of a broad group of constituents, undertake the complex job of gathering the necessary data and resources, identifying all claimants, establishing their respective Allocation Phase shares, and distributing all of the category's royalties.'' Joint Responsive Brief of Certain 2014–12 Cable Participants on Allocation Phase Claimant Category Definitions, Docket No. 16–CRB–0009–CD (2014–17), at 2–3 (May 3, 2019) (footnote omitted).

One participant in the proceeding, however, asserted that the historically-stipulated categories and relevant definitions are arbitrary, produce counterintuitive results, and are contrary to common understanding. *See* Multigroup Claimants' Comments on Claimant Category Definitions and Proposed Modification, Docket Nos. 16–CRB–0009–CD (2014–17) & 16–CRB–0010–SD (2014–17), at 6 (Apr. 19, 2019). This participant asserted that the claimant-centric categories used in past proceedings was not aligned with the way in which system operators decide to retransmit broadcast television signals. *See id.* at 13. The participant proposed a new program-centric category definition, but only for the sports programming category. *See id.* at 7–12.

The Judges have recently allocated cable royalty percentages in the Allocation Phase based on: (i) Evidence from surveys of cable system operators regarding their ranking of types of programming; and (ii) evidence from regressions identifying the actual mix of programming on stations that cable system operators chose to retransmit, in both cases based on the categories stipulated by the participants.[4] The Judges understand there may be reasonable concerns that if the effect of the stipulated categories is to aggregate programs within categories in a manner inconsistent with the cable system operators' usual decision making process, the valuation process may be affected adversely. In this regard, the dollar amount of royalties that a copyright owner of a program receives could vary significantly, and without relationship to relative values, depending upon whether the program was placed within one category versus another. Such concerns regarding the historically-stipulated categories appear pertinent with regard to both cable and satellite royalty distribution proceedings.

The failure of all participants to stipulate to claimant categories as well as the stated concerns with the historically-stipulated category definitions underscore the need for a procedure by which copyright owners and their representatives are afforded the opportunity to propose specific category definitions and provide legal and economic arguments and factual evidence to support their respective positions, enabling the Judges to act on the basis of an adequate administrative record. Pursuant to the authority set forth in 17 U.S.C. 803(b)(6) to establish regulations governing the Judges' proceedings, the Judges seek comment to inform and guide their intent to publish a formal notice of proposed rulemaking to establish specific category definitions applicable to both cable and satellite distribution proceedings.

II. Subjects of Inquiry

A. The Identification of the Allocation Phase Categories

In light of the need to establish Allocation categories, for use in both cable and satellite distribution proceedings, the Judges now seek input on how the Allocation Phase categories should be defined. Because the evidence of relative value across categories in the Allocation Phase reflects the value assigned to program categories by the cable system operators/satellite carriers (as demonstrated most recently by survey and/or regression evidence), the Judges inquire as to the merit of aggregating the Allocation Phase categories by program type rather than by claimant groups, and whether doing so may result in a distribution of royalties that more accurately reflects the relative value of different programming.

The Judges also inquire as to the likely impact any particular set of Allocation Phase categories may have

[2] The Phase I/Allocation participants in satellite distribution proceedings have used the same or very similar categories as participants in cable proceedings. *See, e.g.,* Notice requesting comments, Distribution of Satellite Royalty Funds, Docket 16–CRB–0010–SD (2014–17), 84 FR 33979, 33980 n.1 (Jul 16, 2019) (''Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants.'').

[3] Members of the public may access all submissions in those proceedings through eCRB by searching for Docket Nos. 16–CRB–0009–CD (2014–17) and 16–CRB–0010–SD (2014–17). Registration is not required.

[4] The Judges have never conducted a satellite allocation phase proceeding that resulted in a final determination; rather the allocation phase parties have always settled.

on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

In addition, the Judges inquire as to the need for mechanisms and standards to resolve any disputes as to the identity of participants seeking to represent a particular Allocation Phase category in an Allocation Phase proceeding.

B. The Identification of Invalid Claims

The Judges are in agreement with the CRT observation that its 1980 ruling with respect to ineligible claims ''may not necessarily control any subsequent distribution proceeding.'' *1978 Proceeding* at 63042 (emphasis added). Therefore, the Judges also revisit the identification and treatment of funds that are unclaimed because a filed claim is invalid or not validly represented in a distribution proceeding (invalid claims). The Judges request that commenters provide an adequate factual record to support their positions as to the necessity and feasibility of proposed approaches to the identification and treatment of invalid claims, and the consonance of their proposed approaches with the establishment of relative value. Commenters should address how the treatment of invalid claims may interrelate with the establishment of Allocation Phase categories. For instance, one rationale for intra-category re-apportionment of royalties attributable to invalid claims (the status quo) is that the invalidly-claimed programs have more in common in terms of value creation with the validly-claimed programs in the same category than with the validly-claimed programs in the other categories (which also implicates the above-stated inquiry regarding whether the categories should be claimant-centric or program-centric). If the former, the argument for maintaining intra-category re-allocations of invalid claims may be weaker, because claimant-centric categorization is based on common representation, not common relative program value.

The Judges also inquire as to the likely impact any proposed rule for the identification and treatment of ineligible claims may have on (a) the cost and efficiency of distribution proceedings and (b) the likelihood of achieving settlements to resolve both Allocation Phase and Distribution Phase controversies.

III. Submissions

With respect to both of the subjects of inquiry, commenters should provide narrative responses and proposed regulatory language amending 37 CFR part 351. Commenters should include relevant facts, legal and economic analyses, and citation to authority for each proposed regulatory provision. After considering the proposals, the Judges intend to publish a formal notice of proposed rulemaking in accordance with the provisions of the Administrative Procedures Act.

Dated: December 20, 2019.

Jesse M. Feder,

Chief Copyright Royalty Judge.

[FR Doc. 2019–27970 Filed 12–27–19; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0156; FRL–10003–69–Region 4]

Air Plan Approval; AL, FL, GA, NC, SC, TN; Interstate Transport (Prongs 1 and 2) for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. The Environmental Protection Agency (EPA or Agency) is proposing to approve State Implementation Plan (SIP) revisions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (collectively, Southeast States) addressing the Clean Air Act (CAA or Act) good neighbor interstate transport infrastructure SIP requirements for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve the submission as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

DATES: Written comments must be received on or before January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0156 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009, or via electronic mail at *adams.evan@epa.gov.*

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I. Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIPs meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under 110(a)(2) are referred to as infrastructure requirements.

to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are four so-called ''prongs'' within CAA section 110(a)(2)(D)(i): Section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs under section 110(a)(2)(D)(i)(I). Under prongs 1 and 2 of the good neighbor provision, a SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or from interfering with maintenance of the NAAQS in another state (prong 2). Under section 110(a)(2)(D)(i)(I) of the CAA, EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).[3]

EPA notes that the Agency has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter standards, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).[4] These actions only addressed interstate transport in the eastern United States[5] and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update, and previous regional rulemakings pursuant to the good neighbor provision,[6] EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:[7] (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which EPA requested comment.[8] The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.[9] On October 27, 2017, EPA released a memorandum (2017 memorandum) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.[10] Although the 2017 memorandum also released data for a 2023 modeling year, EPA specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. Additionally, on March 27, 2018, EPA issued a memorandum (March 2018 memorandum) indicating the same 2023 modeling data released in the 2017 memorandum would also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework).

The March 2018 memorandum included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.[11] EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have problems maintaining the standard (under prong 2 of the good neighbor provision) at step 1 of the framework.[12]

The March 2018 memorandum describes the process and results of the updated photochemical and source apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by state impacts on those concentrations. The March 2018 memorandum also explains that the selection of the 2023 analytic year aligns with the 2015 ozone NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the 2017 and March 2018 memoranda, EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.,* monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 memorandum presents design values calculated in two ways: First, following EPA's historic ''3 x 3''

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (D.C. Cir. 2008).

[4] *See* 76 FR 48208 (August 8, 2011) (*i.e.,* CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.,* CSAPR Update).

[5] For purposes of CSAPR and the CSAPR Update action, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

[6] Other regional rulemakings addressing ozone transport include the NO_X SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[7] The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. *See, e.g.,* 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

[8] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] *See* 82 FR 1735.

[10] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[11] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[12] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memorandum''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 (''October 2018 memorandum''), available at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

approach to evaluating all sites; and second, following a modified approach for coastal monitoring sites in which ''overwater'' modeling data were not included in the calculation of future year design values (referred to as the ''no water'' approach).[13]

For purposes of identifying potential nonattainment and maintenance receptors in 2023, EPA applied the same approach used in the CSAPR Update, wherein EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, EPA identified nonattainment receptors as those monitoring sites with measured values[14] exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 memorandum.

After identifying potential downwind nonattainment and maintenance receptors, EPA next performed nationwide, state-level ozone source apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.[15] EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 memorandum. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents.

In the CSAPR and the CSAPR Update, EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, EPA issued a memorandum (the August 2018 memorandum) providing guidance concerning potential contribution thresholds that may be appropriate to apply with respect to the 2015 ozone NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the memorandum included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 memorandum indicated that, based on EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.[16]

While the March 2018 memorandum presented information regarding EPA's latest analysis of ozone transport following the approaches EPA has taken in prior regional rulemaking actions, EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

II. Southeast States' Submissions and EPA's Analysis of the Southeast States' Submissions

The following discussion summarizes EPA's analyses for the submissions from the Southeast States intended to meet prongs 1 and 2 requirements of 110(a)(2)(D)(i)(I) for the 2015 8-hour Ozone NAAQS.

A. Analysis Related to All Southeast States

EPA is proposing to rely on the 2023 modeling data identifying downwind receptors and upwind state contributions, as released in the March 2018 memorandum, to evaluate the Southeast States' good neighbor obligation with respect to the 2015 ozone NAAQS. On September 13, 2019, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its decision in *Wisconsin* v. *EPA* addressing legal challenges to the CSAPR Update, in which EPA partially addressed certain upwind states' good neighbor obligations for the 2008 ozone NAAQS. 938 F.3d 303. While the court generally upheld the rule as to most of the challenges raised in the litigation, the court remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contributions in accordance with the attainment dates found in CAA section 181 by which downwind states must come into compliance with the NAAQS. *Id.* at 313. In light of the court's decision, EPA is providing further explanation regarding why it proposes to find that it is appropriate and consistent with the statute—as well as the legal precedent—to use the 2023 analytic year for assessing good neighbor obligations for the 2015 ozone NAAQS.

EPA believes that 2023 is an appropriate year for analysis of good neighbor obligations for the 2015 ozone NAAQS because the 2023 ozone season is the last relevant ozone season during

[13] *See* March 2018 memorandum, p. 4, for more detail on modeling approach. For the no water approach, EPA eliminated from the design value calculations those modeling data in grid cells that are dominated by water (*i.e.,* more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.,* if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). For this action, EPA used no water averages to identify each state's impact on any downwind nonattainment or maintenance receptor, which can be found in Attachment C of the March 2018 memorandum.

[14] EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. *See* attachment B of the March 2018 memorandum, p. B–1.

[15] As discussed in the March 2018 memorandum, EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

[16] *See* August 2018 memorandum, p. 4.

which achieved emissions reductions in linked upwind states could assist downwind states with meeting the August 2, 2024 Moderate area attainment date for the 2015 ozone NAAQS. EPA recognizes that the attainment date for nonattainment areas classified as Marginal for the 2015 ozone NAAQS is August 2, 2021, which currently applies in several downwind nonattainment areas evaluated in EPA's modeling.[17] However, as explained below, EPA does not believe that either the statute or applicable case law requires the evaluation of good neighbor obligations in a future year aligned with the attainment date for nonattainment areas classified as Marginal.

The good neighbor provision instructs EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. CAA section 110(a)(2)(D)(i); *see also North Carolina* v. *EPA,* 531 F.3d 896, 911–12 (D.C. Cir. 2008). This consistency instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. As the D.C. Circuit held in *North Carolina,* and more recently in *Wisconsin,* the good neighbor provision must be applied in a manner consistent with the designation and planning requirements in title I that apply in downwind states and, in particular, the timeframe within which downwind states are required to implement specific emissions control measures in nonattainment areas and submit plans demonstrating how those areas will attain, relative to the applicable attainment dates. *See North Carolina,* 896 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I); *Wisconsin,* 938 F.3d at 313–18.

While EPA recognizes, as the court held in *North Carolina* and *Wisconsin,* that upwind emissions-reduction obligations therefore must generally be aligned with downwind receptors' attainment dates, unique features of the statutory requirements associated with the Marginal area planning requirements and attainment date under CAA section 182 lead EPA to conclude that it is more reasonable and appropriate to require the alignment of upwind good neighbor obligations with later attainment dates applicable for Moderate or higher classifications. Under the CAA, states with areas designated nonattainment are generally required to submit, as part of their state implementation plan, an ''attainment demonstration'' that shows, usually through air quality modeling, how an area will attain the NAAQS by the applicable attainment date. *See* CAA section 172(c)(1).[18] Such plans must also include, among other things, the adoption of all ''reasonably available'' control measures on existing sources, a demonstration of ''reasonable further progress'' toward attainment, and contingency measures, which are specific controls that will take effect if the area fails to attain by its attainment date or fails to make reasonable further progress toward attainment. *See, e.g.,* CAA section 172(c)(1); 172(c)(2); 172(c)(9). Ozone nonattainment areas classified as Marginal are excepted from these general requirements under the CAA—unlike other areas designated nonattainment under the Act (including for other NAAQS pollutants), Marginal ozone nonattainment areas are specifically exempted from submitting an attainment demonstration and are not required to implement *any* specific emissions controls at existing sources in order to meet the planning requirements applicable to such areas. *See* CAA section 182(a) (''The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area.'') [19] Marginal ozone nonattainment areas are also exempted from demonstrating reasonable further progress towards attainment and submitting contingency measures. *See* CAA section 182(a) (does not include a reasonable further progress requirement and specifically notes that ''Section [172(c)(9)] of this title (relating to contingency measures) shall not apply to Marginal Areas'').

Existing regulations—either local, state, or federal—are typically a part of the reason why ''additional'' local controls are not needed to bring Marginal nonattainment areas into attainment. As described in EPA's record for its final rule defining area classifications for the 2015 ozone NAAQS and establishing associated attainment dates, history has shown that the majority of areas classified as Marginal for prior ozone standards attained the respective standards by the Marginal area attainment date (*i.e.,* without being re-classified to a Moderate designation). *See* 83 FR 10376. As part of a historical lookback, EPA calculated that by the relevant attainment date for areas classified as Marginal, 85 percent of such areas attained the 1979 1–hour ozone NAAQS, and 64 percent attained the 2008 ozone NAAQS.[20] Based on these historical data, EPA expects that many areas classified Marginal for the 2015 ozone NAAQS will also attain by the relevant attainment date as a result of emissions reductions that are already expected to occur through implementation of existing local, state, and federal emissions reduction programs. To the extent states have concerns about meeting their attainment date for a Marginal area, the CAA under section 181(b)(3) provides authority for them to voluntarily request a higher classification for individual areas, if needed.

Areas that are classified as Moderate typically have more pronounced air quality problems than Marginal areas or have been unable to attain the NAAQS under the minimal requirements that apply to Marginal areas. *See* CAA sections 181(a)(1) (classifying areas based on the degree of nonattainment relative to the NAAQS) and (b)(2) (providing for reclassification to the next highest designation upon failure to attain the standard by the attainment date). Thus, unlike Marginal areas, the statute explicitly requires a state with an ozone nonattainment area classified as Moderate or higher to develop an attainment plan demonstrating how the state will address the more significant air quality problem, which generally requires the application of various control measures to existing sources of emissions located in the nonattainment

[17] The Marginal area attainment date is not applicable for nonattainment areas already classified as Moderate or higher, such as the New York Metropolitan Area. For the status of all nonattainment areas under the 2015 ozone NAAQS, see U.S. EPA, 8-Hour Ozone (2015) Designated Area/State Information, *https://www3.epa.gov/airquality/greenbook/jbtc.html* (last updated Sept. 30, 2019).

[18] Part D of title I of the CAA provides the plan requirements for all nonattainment areas. Subpart 1, which includes section 172(c), applies to all nonattainment areas. Congress provided in subparts 2–5 additional requirements specific to the various NAAQS pollutants that nonattainment areas must meet.

[19] States with Marginal nonattainment areas are required to implement new source review permitting for new and modified sources, but the purpose of those requirements is to ensure that potential emissions increases do not interfere with progress towards attainment, as opposed to reducing existing emissions. Moreover, EPA acknowledges that states within ozone transport regions must implement certain emission control measures at existing sources in accordance with CAA section 184, but those requirements apply regardless of the applicable area designation or classification.

[20] *See* Response to Comments on Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach (February 26, 2018), at section A.2.4, available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0202-0122.*

area. *See generally* CAA sections 172(c) and 182(b)–(e).

Given that downwind states are not required to demonstrate attainment by the attainment date or impose additional controls on existing sources in a Marginal nonattainment area, EPA believes that it would be inconsistent to interpret the good neighbor provision as requiring EPA to evaluate the necessity for upwind state emissions reductions based on air quality modeled in a future year aligned with the Marginal area attainment date. Rather, EPA believes it is more appropriate and consistent with the nonattainment planning provisions in title I to evaluate downwind air quality and upwind state contributions, and, therefore, the necessity for upwind state emissions reductions, in a year aligned with an area classification in connection with which downwind states are also required to demonstrate attainment and implement controls on existing sources—*i.e.,* with the Moderate area attainment date, rather than the Marginal area date. With respect to the 2015 ozone NAAQS, the Moderate area attainment date will be in the summer of 2024, and the last full year of monitored ozone-season data that will inform attainment demonstrations is, therefore, 2023.

EPA's interpretation of the good neighbor requirements in relation to the Marginal area attainment date is consistent with the *Wisconsin* opinion. For the reasons explained below, the court's holding does not contradict EPA's view that 2023 is an appropriate analytic year in evaluating good neighbor SIPs for the 2015 ozone NAAQS. The court in *Wisconsin* was concerned that allowing upwind emission reductions to be implemented after the applicable attainment date would require downwind states to obtain more emissions reductions than the Act requires of them, to make up for the absence of sufficient emissions reductions from upwind states. *See* 938 F.3d at 316. As discussed previously, however, this equitable concern only arises for nonattainment areas classified as Moderate or higher for which downwind states are required by the CAA to develop attainment plans securing reductions from existing sources and demonstrating how such areas will attain by the attainment date. *See, e.g.,* CAA section 182(b)(1) & (2) (establishing ''reasonable further progress'' and ''reasonably available control technology'' requirements for Moderate nonattainment areas). Ozone nonattainment areas classified as Marginal are not required to meet these same planning requirements, and thus the equitable concerns raised by the *Wisconsin* court do not arise with respect to downwind areas subject to the Marginal area attainment date.

The distinction between planning obligations for Marginal nonattainment areas and higher classifications was not before the court in *Wisconsin.* Rather, the court was considering whether EPA, in implementing its obligation to promulgate federal implementation plans under CAA section 110(c), was required to fully resolve good neighbor obligations by the 2018 *Moderate* area attainment date for the 2008 ozone NAAQS. *See* 938 F.3d at 312–13. Although the court noted that petitioners had not ''forfeited'' an argument with respect to the Marginal area attainment date, *see id.* at 314, the court did not address whether its holding with respect to the 2018 Moderate area date would have applied with equal force to the Marginal area attainment date because that date had already passed. Thus, the court did not have the opportunity to consider these differential planning obligations in reaching its decision regarding EPA's obligations relative to the then-applicable 2018 Moderate area attainment date because such considerations were not applicable to the case before the court.[21] For the reasons discussed here, the equitable concerns supporting the *Wisconsin* court's holding as to upwind state obligations relative to the Moderate area attainment date also support EPA's interpretation of the good neighbor provision relative to the Marginal area attainment date. Thus, EPA proposes to conclude that its reliance on an evaluation of air quality in the 2023 analytical year for purposes of assessing good neighbor obligations with respect to the 2015 ozone NAAQS is based on a reasonable interpretation of the CAA and legal precedent.

As previously discussed, the March 2018 memorandum identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the ''3 x 3'' and the ''no water'' approaches to calculating future year design values. The March 2018 memorandum identifies 57 potential nonattainment and maintenance receptors in the West in Arizona (2), California (49), and Colorado (6).[22] The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating the Southeast States' 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.[23]

Further, EPA notes that—due to large distance and a general prevailing west to east wind flow—there is no evidence that any of the Southeastern States will impact potential receptors in the West.[24]

B. Alabama

On August 20, 2018, Alabama submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Alabama relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March

[21] The D.C. Circuit, in a short judgment, subsequently vacated and remanded EPA's action purporting to fully resolve good neighbor obligations for certain states for the 2008 ozone NAAQS, referred to as the CSAPR Close-Out, 83 FR 65878 (Dec. 21, 2018). *New York* v. *EPA,* No. 19–1019 (Oct. 1, 2019). That result necessarily followed from the *Wisconsin* decision, because as EPA conceded, the Close-Out ''relied upon the same statutory interpretation of the Good Neighbor Provision'' rejected in *Wisconsin. Id.* slip op. at 3. In the Close-Out, EPA had analyzed the year 2023, which was two years after the Serious area attainment date for the 2008 ozone NAAQS and not aligned with any attainment date for that NAAQS. *Id.* at 2. In *New York,* as in *Wisconsin,* the court was not faced with addressing specific issues associated with the unique planning requirements associated with the Marginal area attainment date.

[22] The number of receptors in the identified western states is 57, irrespective of whether the ''3 x 3'' or ''no water'' approach is used. Further, although EPA has indicated that states may have flexibilities to apply a different analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because EPA is also concluding in this proposed action that the Southeast States will have an insignificant impact on any potential receptors identified in its analysis, these Southeast States need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

[23] As further discussed below, because none of Southeast States' impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[24] See footnote 5, above, regarding states considered to be in the West.

2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Alabama. The Alabama Department of Environmental Management (ADEM) reviewed EPA's preliminary 2023 modeling and determined that the future year projections are appropriate for the purposes of evaluating Alabama's impact on nonattainment and maintenance receptors in other states. Alabama concurred with EPA's preliminary photochemical modeling results, which indicate that Alabama does not contribute above one percent to any downwind nonattainment and maintenance sites. The August 20, 2018, submittal from Alabama also included additional programs that have led to the reduction of ozone in the state. Therefore, ADEM concluded that emissions from Alabama sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Alabama's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.37 ppb and 0.49 ppb, respectively.[25] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[26] and as a result, demonstrate that emissions from Alabama are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Alabama will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Alabama will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

C. Florida

On September 18, 2018,[27] Florida submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Florida relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Florida. Based on Florida's review of EPA's modeling assumptions and model performance evaluation, Florida determined that EPA's future year projections were appropriate for purposes of evaluating Florida impact on attainment and maintenance of the 2015 ozone NAAQS in other states. For example, Florida found that EPA's modeling used emissions inventory projections that were reasonable considering the projected future decline in Florida NO_X emissions. Thus, Florida concurred with EPA's photochemical modeling results that indicate Florida's greatest impacts on any potential downwind nonattainment or maintenance receptor would be 0.21 ppb and 0.53 ppb, respectively.[28] Florida compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of Florida's impacts exceed this threshold, emissions from Florida sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, Florida's submission identifies SIP-approved regulations that both directly and indirectly regulate sources of ozone precursor emissions that contribute to ozone concentrations in ambient air.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Florida's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.21 ppb and 0.53 ppb, respectively.[29] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[30] and as a result, demonstrate that emissions from Florida are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Florida will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Florida will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

D. Georgia

On September 19, 2018,[31] the Georgia Environmental Protection Division (GA EPD) submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Georgia relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Georgia.[32] Based on Georgia's review of EPA's modeling assumptions and model performance evaluation, Georgia determined that EPA's future year projections were appropriate for purposes of evaluating Georgia's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Georgia concurred with EPA's photochemical modeling results that indicate Georgia's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.26

[25] EPA's analysis indicates that Alabama will have a 0.37 ppb impact at the potential nonattainment receptor in Tarrant, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, a 2023 projected maximum design value of 74.8 ppb, and had a 2014–2016 design value of 73 ppb. EPA's analysis further indicates that Alabama will have a 0.49 ppb impact at a potential maintenance receptor in Denton, Texas (Site ID 481210034), which has which has a projected 2023 average design value of 69.7 ppb, a 2023 projected maximum design value of 72.0 ppb, and had a 2014–2016 design value of 80 ppb. *See* the March 2018 memorandum, attachment C.

[26] Because none of Alabama's impacts equal or exceed 0.70 ppb, they necessarily also do not equal or exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[27] EPA notes that the Florida submission was received by EPA on September 26, 2018.

[28] EPA's analysis indicates that Florida will have a 0.21 ppb impact at the potential nonattainment receptor in Brazoria, Texas (Site ID 480391004), which has a 2023 projected average design value of 74.0 ppb, a 2023 projected maximum design value of 74.9 ppb, and had a 2014–2016 design value of 75 ppb. EPA's analysis further indicates that Florida will have a 0.53 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482011034), which has which has a projected 2023 projected average design value of 70.8 ppb, a 2023 projected maximum design value of 71.6 ppb, and had a 2014–2016 design value of 73 ppb. *See* the March 2018 memorandum, attachments C.

[29] EPA's analysis indicates that Florida will have a 0.21 ppb impact at the potential nonattainment receptor in Brazoria, Texas (Site ID 480391004), which has a 2023 projected average design value of 74.0 ppb, a 2023 projected maximum design value of 74.9 ppb, and had a 2014–2016 design value of 75 ppb. EPA's analysis further indicates that Florida will have a 0.53 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482011034), which has which has a projected 2023 projected average design value of 70.8 ppb, a 2023 projected maximum design value of 71.6 ppb, and had a 2014–2016 design value of 73 ppb. *See* the March 2018 memorandum, attachments B, C.

[30] Because none of Florida's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[31] EPA notes that the Georgia submission was received by EPA on September 24, 2018.

[32] *See* Table A–1 and Table A–2 in Appendix A of Georgia's submittal. EPD highlights Georgia's impact to nonattainment and maintenance sites in the East. They also note that all values are less than the defined threshold of 0.70 ppb.

ppb and 0.34 ppb, respectively. Georgia compared these values to a screening threshold and concluded that emissions from Georgia sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, the Georgia submittal identified regulations that have been approved into the Georgia SIP to provide for the control of NO_X and VOCs, which are precursors that contribute to ambient ozone concentrations.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Georgia's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.26 ppb and 0.34 ppb, respectively.[33] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[34] and as a result, demonstrate that emissions from Georgia are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Georgia will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Georgia will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

E. North Carolina

On September 27, 2018, North Carolina submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. North Carolina relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in North Carolina. Based on North Carolina's review of EPA's modeling assumptions, the State determined that EPA's future year projections were conservative for purposes of evaluating North Carolina's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, North Carolina concurred with EPA's photochemical modeling results that indicate North Carolina's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.43 ppb and 0.42 ppb, respectively. North Carolina compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because North Carolina's impacts to neighboring states are projected to be less than 0.70 ppb, emissions from North Carolina sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. North Carolina further performed back trajectory analyses to confirm that North Carolina did not significantly contribute to ozone exceedances at ozone monitors in the East, and identified SIP-approved regulations that both directly and indirectly impact ozone concentrations in the State.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that North Carolina's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.43 ppb and 0.42 ppb, respectively.[35] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[36] and as a result, demonstrate that emissions from North Carolina are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from North Carolina will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from North Carolina will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

F. South Carolina

On September 7, 2018, South Carolina submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. South Carolina relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in South Carolina. Based on South Carolina's review of EPA's modeling assumptions, techniques, and data, South Carolina determined that EPA's future year projections were appropriate for purposes of evaluating South Carolina's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, South Carolina concurred with EPA's photochemical modeling results that indicate South Carolina's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.12 and 0.14 ppb, respectively. South Carolina compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of South Carolina's impacts exceed this threshold, emissions from South Carolina sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The South Carolina SIP also includes several regulations that address the attainment, nonattainment and maintenance of the ozone NAAQS.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that South Carolina's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.12 ppb and 0.14 ppb, respectively.[37]

[33] EPA's analysis indicates that Georgia will have a 0.26 ppb impact at the potential nonattainment receptor in Tarrant, Texas (Site ID 484392003), which has a 2023 projected average design value of 72.5 ppb, a 2023 projected maximum design value of 74.8 ppb, and had a 2014–2016 design value of 73 ppb. EPA's analysis further indicates that Georgia will have a 0.34 ppb impact at a potential maintenance receptor in Denton, Texas (Site ID 481210034), which has which has a projected 2023 projected average design value of 69.7 ppb, a 2023 projected maximum design value of 72.0 ppb, and had a 2014–2016 design value of 80 ppb. *See* the March 2018 memorandum, attachments B, C.

[34] Because none of Georgia's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[35] EPA's analysis indicates that North Carolina will have a 0.43 ppb impact at the potential nonattainment receptor in Fairfield, Connecticut (Site ID 90019003), which has a 2023 projected average design value of 73.0 ppb, a 2023 projected maximum design value of 75.9 ppb, and had a 2014–2016 design value of 85.0 ppb. EPA's analysis further indicates that North Carolina will have a 0.42 ppb impact at a potential maintenance receptor in Harford, Maryland (Site ID 240251001), which has which has a projected 2023 projected average design value of 70.9 ppb, a 2023 projected maximum design value of 73.3 ppb, and had a 2014–2016 design value of 73.0 ppb. *See* the March 2018 memorandum, attachments B, C.

[36] Because none of North Carolina's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[37] EPA's analysis indicates that South Carolina will have a 0.12 ppb impact at the potential nonattainment receptor in Fairfield, Connecticut (Site ID 90019003), which has a 2023 projected average design value of 73.0 ppb, a 2023 projected maximum design value of 75.9 ppb, and had a 2014–2016 design value of 85 ppb. EPA's analysis further indicates that South Carolina will have a 0.14 ppb impact at a potential maintenance receptor in Harris, Texas (Site ID 482010024), which has which has a projected 2023 projected average design value of 70.4 ppb, a 2023 projected maximum design value of 72.8 ppb and had a 2014–

These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[38] and as a result, demonstrate that emissions from South Carolina are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from South Carolina will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from South Carolina will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

G. Tennessee

On September 13, 2018, Tennessee submitted a SIP revision addressing the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Tennessee relied on the results of EPA's modeling for the 2015 ozone NAAQS, contained in the March 2018 memorandum, to identify downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Tennessee. Based on Tennessee's review of EPA's modeling assumptions, Tennessee determined that EPA's future year projections were appropriate for purposes of evaluating Tennessee's impact on attainment and maintenance of the 2015 ozone NAAQS in other states. Thus, Tennessee concurred with EPA's photochemical modeling results that indicate Tennessee's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.31 ppb and 0.65 ppb, respectively. Tennessee compared these values to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS, and concluded that because none of Tennessee's impacts exceed this threshold, emissions from Tennessee sources will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. Additionally, the Tennessee SIP includes several regulations that address the attainment, nonattainment, and maintenance of the ozone NAAQS.

EPA's updated 2023 modeling discussed in the March 2018 memorandum indicates that Tennessee's largest impact on any potential downwind nonattainment and maintenance receptor in the East are 0.31 ppb and 0.65 ppb, respectively.[39] These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),[40] and as a result, demonstrate that emissions from Tennessee are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 memorandum. As discussed above, there is no evidence that emissions from Tennessee will impact receptors in the West. Accordingly, EPA proposes to conclude that emissions from Tennessee will not contribute to any potential receptors, and thus, the State will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

III. Proposed Actions

As discussed in the previous sections, each of the Southeast States (Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee) concluded that emissions from sources in the states will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. EPA's evaluation of the Southeast States' submissions, discussed above, confirms this finding. Therefore, EPA is proposing to approve the interstate transport portions of the infrastructure SIP submissions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS. EPA is requesting comments on the proposed approvals.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, for Alabama, Florida, Georgia, North Carolina, and Tennessee, the SIP is not approved to apply on any Indian reservation land or in any other

2016 design value of 79 ppb. *See* the March 2018 memorandum, attachments B, C.

[38] Because none of South Carolina's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

[39] EPA's analysis indicates that Tennessee will have a 0.31 ppb impact at three potential nonattainment receptors: Fairfield, Connecticut (Site ID 90013007), which has a 2023 projected average design value of 71.0 ppb, a 2023 projected maximum design value of 75.0 ppb, and had a 2014–2016 design value of 81 ppb; Milwaukee, Wisconsin (Site ID 550790085), which has a 2023 projected average design value of 71.2 ppb, a 2023 projected maximum design value of 73 ppb and had a 2014–2016 design value of 71 ppb; and Sheboygan, Wisconsin (Site ID 551170006), which has a 2023 projected average design value of 72.8 ppb, a 2023 projected maximum design value of 75.1 ppb and had a 2014–2016 design value of 79 ppb. EPA's analysis further indicates that Tennessee will have a 0.65 ppb impact at a potential maintenance receptor Allegan, Michigan (Site ID 260050003), which has which has a projected 2023 projected average design value of 69.0 ppb, a 2023 projected maximum design value of 71.7 ppb and had a 2014–2016 design value of 75 ppb. *See* the March 2018 memorandum, attachments B, C.

[40] Because none of Tennessee's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

For South Carolina, because this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this proposed action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 12, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–27695 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0321; FRL–10003–74–Region 9]

Air Plan Conditional Approval and Disapproval; Arizona; Maricopa County; Power Plants, Fuel Burning Equipment, and Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve two revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP) concerning fuel-burning equipment and internal combustion engines. The EPA is also proposing to disapprove one revision to the Maricopa County portion of the Arizona SIP concerning power plants. We are proposing action on Maricopa County rules that regulate these emission sources under the Clean Air Act (CAA or the ''Act''). We are taking comments on these proposals and plan to follow with final actions.

DATES: Any comments must arrive by January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0321 at *http://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3073 or by email at *gong.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What rules did the State submit?

On June 22, 2017, the Arizona Department of Environmental Quality (ADEQ, or the ''State'') electronically submitted a SIP revision from the Maricopa County Air Quality Department (MCAQD, or the ''County'') revising several rules. Table 1 lists the rules on which the EPA is proposing action, with the dates they were revised by the MCAQD, the dates they were submitted by the ADEQ, and the type of action that the EPA is proposing in this notice.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Revised	Submitted	Proposed action
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval.
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources.	November 2, 2016	June 22, 2017	Conditional Approval.
324	Stationary Reciprocating Internal Combustion Engines (RICE).	November 2, 2016	June 22, 2017	Conditional Approval.

On December 22, 2017, the submittal containing the rules listed in Table 1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved earlier versions of the rules listed in Table 1 into the SIP on October 14, 2009 (74 FR 52693, 40 CFR 52.120, paragraph (c), Table 4—EPA-Approved Maricopa County Air Pollution Control Regulations). The ADEQ previously submitted these rules in a SIP revision on December 19, 2016, along with the County's reasonably available control technology (RACT) demonstration. However, this submittal did not include documentation that showed the entirety of the County's SIP revision had met the public notice requirements required for completeness under 40 CFR part 51 Appendix V. The County addressed the public notice requirement and the State resubmitted the submittal on June 22, 2017, and withdrew the December 19, 2016 submittal on May 17, 2019.

C. What is the purpose of the submitted rule revisions?

Oxides of nitrogen (NO_X) helps produce ground-level ozone, smog and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. The rules in Table 1 were submitted to control NO_X emissions from power plants, process heaters, boilers, stationary turbines, and internal combustion engines. The EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of NO_X in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). Maricopa County regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hour ozone standard (40 CFR 81.303). Maricopa County's ''Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP),'' adopted December 5, 2016, submitted June 22, 2017 (the ''2016 RACT SIP''), identified all of the major sources of NO_X within the County's portion of the Phoenix-Mesa nonattainment area, and concluded that there were major sources within the Maricopa County portion of the Phoenix-Mesa nonattainment area subject to each of these rules. Accordingly, all three of the submitted rules must establish RACT levels of control for these major sources.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Gas Turbines,'' EPA 453/R–93–007, January 1993.
4. ''Alternative Control Techniques Document—NO_X Emissions from Industrial, Commercial & Institutional Boilers,'' EPA 453/R–94–022, March 1994.
5. ''Alternative Control Techniques Document—NO_X Emissions from Stationary Reciprocating Internal Combustion Engines,'' EPA 453/R–93–032, July 1993.
6. ''De Minimis Values for NO_X RACT,'' Memorandum from G. T. Helms, Group Leader, Ozone Policy and Strategies Group, U.S. EPA, January 1, 1995.
7. ''Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT),'' Memorandum from D. Ken Berry, Acting Director, Air Quality Management Division, US. EPA, March 16, 1994.

B. Do the rules meet the evaluation criteria?

Rules 322, 323 and 324 apply to various emission sources that are major sources of NO_X in the Phoenix-Mesa area. We find that the County's submissions are largely consistent with the applicable CAA requirements, with the exceptions identified below. In a letter dated January 28, 2019 (the ''commitment letter''), the County enumerated certain rule deficiencies and committed to revise those provisions in accordance with EPA guidance, and submit the revised rules within eleven months of a conditional approval.[1] On February 25, 2019, the ADEQ provided its own commitment to submit the County's revised rules to the EPA within one month after the County's action and request for SIP revision.[2] On December 5, 2019, the County provided a supplement to the commitment letter to resolve further deficiencies in the submitted rules.[3]

The EPA proposes to disapprove Rule 322 because it includes provisions that do not meet our evaluation criteria, and the deficiencies in the rule as submitted may cause a weakening from the current SIP-approved rule. These issues are summarized below and discussed further in our TSD evaluating Rule 322.

The EPA also proposes to conditionally approve Rules 323 and 324, because they strengthen the SIP. The County has committed to adopt specific enforceable measures to remedy the identified rule deficiencies in these rules, and the State has committed to submit those updated rules as SIP revisions. Our TSDs for Rules 323 and 324 provide further details on our evaluation for these conditional approvals.

C. What are the deficiencies?

1. Deficiencies in Rule 322

Rule 322's provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision for the following reasons.

a. Rule 322 contains provisions that constitute unacceptable and unenforceable director's discretion. Specifically, the rule provides for the County's Air Pollution Control Officer to approve as RACT alternative control strategies that differ from the rule's existing emission limits or requirements without further approval from the EPA. This director's discretion conflicts with long-standing EPA policy. Although the County has committed to revise this provision, the EPA cannot conditionally

[1] Letter dated January 28, 2019, from Philip A. McNeely, Director, Maricopa County Air Control Quality Department, to Misael Cabrera, Director, Arizona Department of Environmental Quality.

[2] Letter dated February 25, 2019, from Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality, to Michael Stoker, Regional Administrator, U.S. EPA, Region IX.

[3] Letter dated December 5, 2019, from Philip A. McNeely, Director, Maricopa County Air Control Quality Department, to Doris Lo, Manager, Rules Office, Air and Radiation Division, U.S. EPA Region IX.

approve Rule 322 because these alternative control strategies may constitute a weakening of the SIP-approved rule.

b. Rule 322's NO_X emission limits are not demonstrated to meet RACT for steam generating units that are applicable to this rule. The County must revise the limits for these units or provide sufficient justification as to why these limits constitute RACT for these emission sources.

c. Two provisions in Rule 322 exempt units from specific requirements when firing on emergency fuel. These exemptions are overly broad. First, unlike in other jurisdictions, the rule does not limit the duration in which emergency fuel can be used. Rule 322 must specify a maximum length of time that emergency fuel can be used per year. Second, the rule exempts units from all emission limits while testing operations for using emergency fuel. As written, the language could be interpreted to mean that any unit that test fires on emergency fuel would be exempt from all emission limits all of the time. The County must clarify that the exemption only applies during the testing period.

d. The compliance schedule requirements for units that are currently not complying with the limits in the rule may be extended by the Control Officer as needed or could be extended by the County's inaction or delay to approve a compliance schedule. The County must include an enforceable deadline by which a facility must comply with the rule.

e. Rule 322 currently does not include a compliance determination requirement, such as requiring regular stack tests or the use of continuous emission monitoring systems. The County must include enforceable compliance determination schedules to verify that facilities are complying with the emission limits in the rule.

Although the District and State provided commitment letters addressing some of the listed deficiencies, the rule as submitted is not SIP-strengthening because deficiency (a) above could allow for a source to apply for an alternative control strategy that results in weakened emission limits or controls without the EPA's concurrent approval that this alternative is RACT. Although the existing SIP-approved version of Rule 322 contains less stringent limits and applies to fewer sources than the submitted version of Rule 322, this new provision could allow any existing source to apply to the County for an alternative RACT determination that may or may not be consistent with the existing or new NO_X limits. Therefore the submitted Rule 322 is not appropriate for a conditional approval. Our TSD for Rule 322 contains our discussion and analysis for all the deficiencies and the County's commitments.

2. Deficiencies in Rule 323 and the County's and State's Commitments

The provisions for Rule 323 do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision. However, the submitted rule strengthens the SIP and the County's and State's commitment letters include specific and enforceable commitments to address the deficiencies, which serve as the basis for today's proposed conditional approval. Our conditional approval of the SIP revision for Rule 323 is based on the following deficiencies and County and State commitments:

a. Much like deficiency (c) for Rule 322, the emergency fuel use exemptions in the rule are overly broad. In Rule 323, the total allowable length of emergency fuel burning must be limited and must require that the facility owner/operator notify the County when switching to emergency fuel. The language in the rule exempting units firing emergency fuel for testing purposes could be interpreted to allow for the exemption during any operating period so long as there was a testing period. The County has committed to clarify that the exemptions only apply during the testing period.

b. All major sources of NO_X must be subject to RACT limits or requirements. In Rule 323, all turbines and all boilers rated larger than 100 million British thermal units per hour (MMBtu/hr) must comply with emission limits in the rule. Boiler units rated between 10 MMBtu/hr and 100 MMBtu/hr may opt to comply with the emission limits or tune the units annually. The burner maintenance requirements in the rule's tuning requirements are not RACT, as many other jurisdictions regulating units in this size category are able to achieve numeric limits or have more stringent tuning requirements. As the rule is written, major source units in the nonattainment area are only required to tune the engine instead of complying with a RACT NO_X limit. The County has committed to clarify that larger units shall comply with Rule 323 by meeting a NO_X limit.

c. Rule 323's NO_X emission limits are not demonstrated to meet RACT for non-turbine combustion equipment that are applicable to this rule. The County has committed to revise the limits for these units or provide sufficient justification as to why these limits constitute RACT for these emission sources.

d. The rule allows operators to comply with the limits in this rule by installing an emission control system but does not include any requirement to verify the effectiveness of that system in meeting the emission limits. The County has committed to revise the rule to make clear that any unit on which an emission control system is installed must comply with the numeric RACT limit.

e. The operations and maintenance plan requirements for emissions control systems are only approved by the Control Officer. This constitutes unacceptable director's discretion. The County has committed to codify additional requirements for acceptable operations and maintenance plans into the rule that would constrain the discretion of the director in approving or denying these plans.

f. The Rule specifies that boilers larger than 100 MMBtu/hr must source test triennially but does not describe a testing frequency for other units. Other units must be tested at least triennially. The County has committed to require a minimum testing frequency for these units.

g. The rule lacks a definition for ''boiler,'' and for ''continuous emissions monitoring system.'' The County has committed to include these definitions in the rule.

Our TSD for Rule 323 contains further discussion and analysis of these deficiencies and the County's and State's commitments.

3. Deficiencies in Rule 324 and the County's and State's Commitments

The provisions for Rule 324 also do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision. The County's and State's commitment letters included specific and enforceable commitments to address these deficiencies. Our proposed conditional approval of the SIP revision for Rule 324 is based on the following deficiencies and the County's and State's commitments to correct them:

a. The current structure of rule applicability and emission limits does not clearly outline a RACT limit for NO_X and VOC emissions from all applicable internal combustion (IC) engines. The County must include control requirements or limits for engines otherwise subject to federal requirements and standards in 40 CFR part 60, subparts IIII and JJJJ. The Clean Air Act requires that RACT limitations be approved into the federally-

enforceable SIP. It is inappropriate to rely on requirements outside of the SIP, such as the Standards of Performance for New Stationary Sources found in 40 CFR part 60. The County has committed to include applicable numeric limits or other requirements directly in the rule language.

b. The current rule only applies to engines rated greater than 250 brake horsepower (bhp), and to engines rated greater than 50 bhp or greater when operating at a facility whose units sum to more than 250 bhp. The County should lower the applicability threshold for all engines to 50 bhp to be in line with other jurisdictions' RACT rules. The current rule also does not clearly state compliance requirements for 50 bhp engines summed at a 250 bhp facility. The County has committed to lower the applicability threshold and to clarify requirements for those smaller engines.

c. The current rule allows for unacceptable flexibility in the treatment of replacement engines and emergency engines. Emergency engines that serve as backup to replace non-emergency engines may do so until the non-emergency engine is repaired, but this time span is otherwise unbounded, and the emergency engines may operate above RACT limits. Current rule provisions also allow for engines that are deemed equivalent or identical to replace existing engines and then be treated the same as the engine being replaced; but there are no requirements for replacement engines to quantify emissions equivalency or reductions. The County has committed to limit the total amount of time that these types of emergency engines can operate, to modify the definitions of ''emergency engine'' and ''identical replacement engine,'' and to remove the definition for ''equivalent replacement engine.''

d. The current rule does not specify a compliance determination interval for engines, other than at the Control Officer's discretion. The County has committed to require compliance determination performance tests every two years for non-emergency engines located at major sources. The County has also committed to require compliance determination requirements for certified non-emergency engines and for non-emergency engines.

Our TSD for Rule 324 contains further discussion and analysis of these deficiencies and the County's and State's commitments.

D. EPA Recommendations To Further Improve the Rules

The TSDs for Rules 322, 323, and 324 also describe additional rule revisions that we recommend for the next time the County modifies the rules that do not constitute approvability issues at this time.

E. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, we are proposing full disapproval of the submitted MCAQD Rule 322. If the disapproval for Rule 322 is finalized, this action would trigger the 2-year clock for the federal implementation plan (FIP) requirement under CAA section 110(c)(1). Final disapproval would also trigger sanctions under CAA section 179(a)(2) and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

In addition, section 110(k)(4) authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan's conditional approval. 42 U.S.C. 7410(k)(4). In this instance, the enforceable measures that the State must submit are new or revised rules that correct the rule deficiencies identified above for MCAQD Rules 323 and 324. As noted above, the County transmitted letters on January 28, 2019, and December 5, 2019, committing to adopt revisions that would address the deficiencies identified in Rules 323 and 324. Accordingly, we are proposing to conditionally approve Rules 323 and 324. If these proposed conditional approvals are finalized as proposed, and the County or the State fails to comply with these commitments for either rule, the conditional approval for that rule would convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two year clock for a FIP under CAA section 110(c)(1).

Note that the submitted rules have been adopted by the MCAQD, and the EPA's final conditional approvals and full disapproval would not prevent the County from enforcing them. The conditional approvals also would not prevent any portion of rules 323 and 324 from being incorporated by reference into the federally enforceable SIP as discussed in a Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, U.S. EPA to EPA Regional Air Directors, Regions I–X, Subject: ''Processing of State Implementation Plan (SIP) Submittals,'' found at: *https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf.*

We will accept comments from the public on the proposed disapproval and conditional approvals for the next 30 days.

III. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MCAQD Rule 323, ''Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources,'' as revised on November 2, 2016, and MCAQD Rule 324 ''Stationary Reciprocating Internal Combustion Engines (RICE),'' as revised on November 2, 2016. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because actions such as SIP approvals are exempted under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small

entities. This proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove or conditionally approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revisions that the EPA is proposing to disapprove or conditionally approve would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–27843 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0503; FRL–10003–70–Region 4]

Air Plan Approval; GA and NC: Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the Georgia and North Carolina State Implementation Plan (SIP) submissions provided on September 24, 2018 and September 27, 2018, respectively, for inclusion into their respective SIPs. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. Georgia and North Carolina certified that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA is proposing to determine that the Georgia and North Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Comments must be received on or before January 29, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0503 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bell can be reached via telephone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

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V. Proposed Action
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I. Background and Overview

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

EPA is proposing to approve Georgia's September 24, 2018 SIP revision provided to EPA through the Georgia Environmental Protection Division (GA EPD) and North Carolina's September 27, 2018[2] SIP revision provided to EPA through the North Carolina Department of Environmental Quality (NC DEQ) for the applicable requirements of the 2015 8-hour ozone NAAQS, with the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states, and prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), EPA will address these provisions in separate rulemaking actions.

II. What elements are required under Sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.[3]

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are described in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (hereinafter ''2013 Guidance'') are listed below and summarized in section IV of this rulemaking:[4]

- *110(a)(2)(A):* Emission Limits and Other Control Measures
- *110(a)(2)(B):* Ambient Air Quality Monitoring/Data System
- *110(a)(2)(C):* Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[5]
- *110(a)(2)(D)(i)(I) and (II):* Interstate Pollution Transport
- *110(a)(2)(D)(ii):* Interstate Pollution Abatement and International Air Pollution
- *110(a)(2)(E):* Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- *110(a)(2)(F):* Stationary Source Monitoring and Reporting
- *110(a)(2)(G):* Emergency Powers
- *110(a)(2)(H):* SIP Revisions
- *110(a)(2)(I):* Plan Revisions for Nonattainment Areas[6]
- *110(a)(2)(J):* Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- *110(a)(2)(K):* Air Quality Modeling and Submission of Modeling Data
- *110(a)(2)(L):* Permitting fees
- *110(a)(2)(M):* Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon portions of the SIP submissions from Georgia and North Carolina that address certain infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as an ''infrastructure SIP.'' These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes

[1] In these infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] The September 27, 2018, SIP submission provided by NC DEQ's Division of Air Quality (DAQ) was received by EPA on October 10, 2018.

[3] Throughout this rulemaking, the term ''North Carolina Administrative Code (NCAC)'' indicates that the cited regulation has been approved into North Carolina's SIP, unless otherwise indicated. The term ''North Carolina General Statutes (NCGS)'' cites to the North Carolina state statutes, which are not a part of the SIP unless otherwise indicated. For Georgia, the term ''Georgia's Air Quality Control Rule'' indicates that the cited regulation has been approved into Georgia's SIP, unless otherwise indicated. The term ''Georgia Air Quality Act Article: Air Quality (O.C.G.A.)'' cites to Georgia state statutes, which are not part of the SIP unless otherwise indicated.

[4] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the Part D nonattainment permitting requirements of 110(a)(2)(C).

[5] As mentioned above, the Part D permit program for construction and modification of major stationary sources is not relevant to this proposed rulemaking.

[6] As also mentioned above, this element is not relevant to this proposed rulemaking.

that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[7] Unless otherwise noted below, EPA is following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[8] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's analysis of how Georgia and North Carolina addressed the elements of the Section 110(a)(1) and (2) ''Infrastructure'' provisions?

Georgia's and North Carolina's infrastructure SIP submissions address certain provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) Emission Limits and Other Control Measures: Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Georgia's and North Carolina's SIPs include enforceable emission limitations and other control measures. EPA provides more detail below for each state addressed in this proposed rulemaking.

Georgia

Georgia's Air Quality Control Rules 391–3–1–.01—''*Definitions. Amended.*'', 391–3–1–.02,—''*Provisions. Amended.*'', and 391–3–1–.03—''*Permits. Amended.*'' collectively establish enforceable emissions limitations and other control measures, means, or techniques for activities that contribute to ozone concentrations in the ambient air, and provide authority for GA EPD to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA.

North Carolina

CAA section 110(a)(2)(A) requirements are met through several North Carolina Administrative Code (NCAC) regulations. Specifically, 15A NCAC 2D .0500 *Emission Control Standards* establishes emission limits for ozone precursor pollutants. The following SIP-approved rules address additional control measures, means and techniques: 15A NCAC 2D .0600—*Monitoring: Recordkeeping: Reporting,* 15A NCAC 2D .0900—*Volatile Organic Compounds,* 15A NCAC 2D .1400—*Nitrogen Oxides,* and 15A NCAC 2D .2600—*Source Testing.* In addition, North Carolina General Statutes (NCGS)143–215.107(a)(5)—*Air quality standards and classifications,* provides the North Carolina Environmental Management Commission (EMC) with the statutory authority, ''[t]o develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards.''

EPA has made the preliminary determination that the provisions contained in Georgia's and North Carolina's SIP-approved state regulations and state statutes are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of section 110(a)(2(A) for the 2015 8-hour ozone NAAQS in each of the states.

2. 110(a)(2)(B) Ambient Air Quality Monitoring/Data System: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. EPA provides more detail below for each state addressed in this proposed rulemaking.

Georgia

Georgia's authority to monitor ambient air quality is found in the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(2)).

North Carolina

North Carolina's NCGS 143–215.107(a)(2)—*Air quality standards and classifications* provides the EMC with the statutory authority ''To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.''

Ambient Monitoring Network Plans

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[9]

On June 29, 2018, and June 13, 2019, North Carolina and Georgia submitted their monitoring network plans to EPA, respectively. On October 22, 2018, and October 3, 2019, EPA approved these monitoring network plans for North Carolina and Georgia, respectively. Georgia's and North Carolina's approved monitoring network plans are available in the docket for this proposed action. EPA has made the preliminary determination that Georgia's and North Carolina's SIPs and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2015 8-hour ozone NAAQS.

3. 110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources: This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). Georgia's and North Carolina's 2015 8-hour ozone NAAQS infrastructure SIP submissions cite a number of SIP provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below.

[7] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior actions on Georgia and North Carolina infrastructure SIPs to address the 2010 Nitrogen Dioxide NAAQS. *See* 81 FR 41905 (June 28, 2016) and 81 FR 47115 (July 20, 2016), respectively.

[8] *See Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

[9] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

Georgia

Enforcement: Georgia's enforcement program covers mobile and stationary sources, consumer products, and fuels. The enforcement requirements are met through two of Georgia's Air Quality Control Rules: 391–3–1–.07—''*Inspections and Investigations. Amended.*'' and 391–3–1–.09—''*Enforcement. Amended.*'' Georgia also cites to enforcement authority found in O.C.G.A. Section 12–9–13 in its submittal, which provides the director with the authority to issue orders to remedy violations of rules and regulations. Collectively, these regulations and State statute provide for enforcement of ozone emission limits and control measures.

Regulation of minor sources and modifications: Georgia's SIP-approved Air Quality Control Rule 391–3–1–.03(1)—''*Construction (SIP) Permit.*'' governs the preconstruction permitting of modifications, construction of minor stationary sources, and minor modifications of major stationary sources.

Preconstruction PSD Permitting for Major Sources: With regard to section 110(a)(2)(C) related to the programs for preconstruction PSD permitting for major sources, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Georgia's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

North Carolina

Enforcement: NC DAQ's SIP-approved regulations provide for enforcement of ozone emission limits and control measures through enforceable permits. North Carolina's infrastructure SIP submission also cited to the following statutory provisions as supporting this element: NCGS 143–215.108—*Control of sources of air pollution; permits required* and NCGS 143–215.107(a)(7)—*Air quality standards and classifications.* In addition, North Carolina cited NCGS 143–215.6A, 6B, and 6C—*Enforcement procedures: civil penalties, criminal penalties,* and *injunctive relief,* which provides NC DAQ with the statutory authority to seek civil and criminal penalties and injunctive relief to enforce air quality rules.

Regulation of minor sources and modifications: NC DAQ's Regulation 15A NCAC 2Q .0300—*Construction and Operation Permits* governs the preconstruction permitting of minor modifications and construction of minor stationary sources.

PSD Permitting for Major Sources: With regard to section 110(a)(2)(C) related to the programs for preconstruction PSD permitting for major sources, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to North Carolina's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs are adequate for enforcement of control measures and regulation of minor sources and modifications related to the 2015 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport: Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1'') and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1, 2, and 3: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) or the PSD element (prong 3). EPA will consider these requirements in relation to Georgia's and North Carolina's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II)—prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. For any relevant NAAQS, a state may satisfy the prong 4 requirement by relying on a fully-approved regional haze SIP.

Georgia

Georgia's SIP contains a fully-approved regional haze plan (83 FR 19637, May 4, 2018). EPA's approval of Georgia's regional haze SIP ensures that emissions from Georgia are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

North Carolina

North Carolina's SIP contains a fully-approved regional haze plan (81 FR 58400, August 25, 2016). EPA's approval of North Carolina regional haze SIP ensures that emissions from North Carolina are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

5. 110(a)(2)(D)(ii) Interstate Pollution Abatement and International Air Pollution: Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with section 115 and 126 of the Act, relating to notification to nearby states, and interstate and international pollution abatement.

Georgia

The following two Georgia Air Quality Control Rules provide Georgia with the authority to conduct certain actions in support of this infrastructure element: 391–3–1–.02(7) for the State's PSD regulations and 391–3–1–.03(8) for the State's permitting regulations. Georgia's Air Quality Control Rules 391–3–1–.02.(7)—''*Provisions. Amended,*'' and 391–3–1–.03.(8)—''*Permits. Amended,*'' collectively, require any new major source or major modification to undergo PSD or nonattainment new source review (NNSR) permitting, and provide notification to other potentially affected Federal, state, and local government agencies, which satisfies the notification requirements of section 126(a). In addition, Georgia does not have any pending obligation under section 115 or 126(b) of the CAA related to international or interstate pollution abatement.

North Carolina

North Carolina's State regulations: 15A NCAC 2D .0530—''*Prevention of Significant Deterioration*'' and 15A NCAC 2D .0531—''*Sources in Nonattainment Areas*'' provide how NC DAQ will notify neighboring states of potential impacts from new or modified sources. These regulations require NC DAQ to provide an opportunity for a public hearing to the public, which includes state or local air pollution

control agencies, ''whose lands may be affected by emissions from the source or modification'' in North Carolina. In addition, North Carolina does not have any pending obligation under sections 115 or 126(b) of the CAA related to international or interstate pollution abatement.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies: Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA's rationale respecting each sub-element for which EPA is proposing action in this rulemaking is described below.

Georgia

In support of sub-elements 110(a)(2)(E)(i) and (iii), Georgia's infrastructure SIP submission demonstrates that it has adequate authority for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. In its SIP submittal, Georgia cites to its authority for section 110(a)(2)(E)(i) as the CAA section 105 grant process, O.C.G.A. 12–9–10, and Georgia's Air Quality Control Rule 391–3–1–.03(9) which establish Georgia's Air Permit Fee System. For section 110(a)(2)(E)(iii), the State does not rely on localities in Georgia for specific SIP implementation. As evidence of the adequacy of GA EPD's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Georgia on March 25, 2019, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to GA EPD is available in the docket for this proposed action. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, GA EPD's grants were finalized and closed out.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP contain requirements providing that: (a)(1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. To meet these requirements, Georgia's infrastructure SIP submission cites to O.C.G.A. Section 12–9–5—*Powers and duties of Board of Natural Resources as to air quality generally* which provides the powers and duties of the Board of Natural Resources as to air quality and provides that at least a majority of members of this board represent the public interest and not derive any significant portion of income from persons subject to permits or enforcement orders, and that potential conflicts of interest will be adequately disclosed. This provision has been approved into the SIP.

North Carolina

In support of sub-elements 110(a)(2)(E)(i) and (iii), North Carolina's infrastructure SIP submission cites several regulations. Rule 15A NCAC 2Q. 0200—''*Permit Fees,*'' provides the mechanism by which stationary sources that emit air pollutants pay a fee based on the quantity of emissions, which is authorized by State statute NCGS 143–215.3—*General powers of Commission and Department: Auxiliary powers.* NCGS 143–215.107(a)(1)—*Air quality standards and classifications,* provide the EMC with the statutory authority ''[t]o prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.'' NCGS 143–215.112—*Local air pollution control programs,* provides the EMC with the statutory authority ''to review and have general oversight and supervision over all local air pollution control programs.'' North Carolina has three local air agencies located in Buncombe (Western North Carolina), Forsyth, and Mecklenburg Counties that implement the SIP in these areas.

As further evidence of the adequacy of NC DAQ's resources, EPA submitted a letter to North Carolina on May 2, 2019, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to North Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0503. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. North Carolina satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2018; therefore, North Carolina's grants were finalized and closed out. Collectively, these rules and commitments provide evidence that NC DAQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues. EPA has made the preliminary determination that North Carolina has adequate resources and authority to satisfy sections 110(a)(2)(E)(i) and (iii) of the 2015 8-hour ozone NAAQS.

With respect to the requirements of section 110(a)(2)(E)(ii),[10] North Carolina is not subject to section 128(a)(1) because it has no boards or bodies with authority over air pollution permits or enforcement actions. The initial authority to approve CAA permits or enforcement orders are instead delegated to the Secretary of NC DEQ and his/her designee. Final authority to approve permits and enforcement orders on appeal resides with administrative law judges (ALJs).

On November 3, 2015 (80 FR 67645), EPA approved North Carolina's section 128(a)(2) conflict of interest disclosure requirements for the Secretary of NC DEQ and his/her designee, and ALJs. ALJs [11] meet these requirements through NCGS 7A–754 which contains provisions related to the Office of Administrative Hearings addressing these requirements for the ALJs. NCGS 7A–754 requires ALJs to act impartially, which broadly includes financial considerations, relationships, and other associations. ALJs are prohibited from participating in any matter in which the ALJ's impartiality might reasonably be questioned or the ALJ must disclose the potential conflict of interest on the record in the proceeding. In the case of

[10] *See* the description of the section 128 requirements provided above regarding the proposed action on this element.

[11] EPA has determined that ALJs in North Carolina are authorized to approve permits and enforcement orders on appeal and that the ALJs must therefore meet the conflict of interest disclosure requirements of section 128(a)(2).

such disclosures, the parties to the matter must agree that the disclosed conflict of interest is immaterial before the ALJ may continue to participate in the matter. The Secretary of NC DEQ and his/her designee must file an annual certification disclosing potential conflicts, amend the certification if circumstances change, and must additionally disclose any potential conflict for each final action.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs have adequately addressed the requirements of section 128(a), and accordingly have met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

7. 110(a)(2)(F) Stationary Source Monitoring and Reporting: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance.

Additionally, states are required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI), pursuant to Subpart A to 40 CFR part 51—''Air Emissions Reporting Requirements.'' The NEI is EPA's central repository for air emissions data. All states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants.

Georgia

Georgia's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State.

The following SIP-approved rules enable Georgia to meet the requirements of this element: Georgia Air Quality Control Rules 391–3–1–.02(3)—''*Sampling.*''; 391–3–1–.02(6)(b)—''*Source Monitoring.*''; 391–3–1–.02(11)—''*Compliance Assurance Monitoring.*''; and 391–3–1–.03—''*Permits. Amended.*'' Also, O.C.G.A. 12–9–5(b)(6) provides the State with the authority to conduct actions regarding stationary source emissions monitoring and reporting in support of this infrastructure element. These rules collectively require emissions monitoring and reporting for activities that contribute to ozone concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, and provide authority for GA EPD to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of 2015 8-hour ozone precursor emissions.

Georgia's most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

Georgia's Air Quality Control Rule 391–3–1–.02(3)—''*Sampling,*'' cites to the State's ''Procedures for Testing and Monitoring Sources of Air Pollutants,''[12] which allows the use of all available information to determine compliance under its *Compliance with Standards and Maintenance Requirements* provisions. In addition, EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.

North Carolina

North Carolina's infrastructure SIP submission identifies requirements providing how the State establishes requirements for emissions compliance testing and emissions sampling and analysis. NC DAQ uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. The following North Carolina rules require monitoring of emissions from stationary sources: 15A NCAC 2D .0604—*Exceptions to* ''*Monitoring and Reporting Requirements;*'' 15A NCAC 2D .0605—*General Recordkeeping and Reporting Requirements;* 15A NCAC 2D .0611—''*Monitoring Emissions from Other Sources;*'' 15A NCAC 2D .0612—''*Alternative Monitoring and Reporting Procedures;*'' 15A NCAC 2D .0613—''*Quality Assurance Program;*'' and 15A NCAC 2D .0614—''*Compliance Assurance Monitoring.*'' NCGS 143–215.107(a)(4)—*Air quality standards and classifications* provide the EMC with the statutory authority ''To collect information or to require reporting from classes of sources which, in the judgment of the [EMC], may cause or contribute to air pollution.'' Stationary sources are required to submit periodic emissions reports to the State by Rule 15A NCAC 2Q .0207—''*Annual Emissions Reporting.*'' Also, 15A NCAC 2D .0605(c)—''*General Recordkeeping and Reporting Requirements*'' allows for the use of credible evidence. In the event that the NC DAQ Director has evidence that a source is violating an emission standard or permit condition, the Director may require that the owner or operator of any source submit to the Director any information necessary to determine the compliance status of the source. In addition, EPA is unaware of any provision preventing the use of credible evidence in the North Carolina SIP.

North Carolina's most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs and practices are adequate for the stationary source monitoring and reporting requirements related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) Emergency Powers: This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate

[12] These ''Procedures for Testing and Monitoring Sources of Air Pollutants'' are not incorporated into Georgia's SIP.

contingency plans to implement such authority.

Georgia

Georgia's infrastructure SIP submission cites to O.C.G.A. Sections 12–9–2—*Declaration of public policy,* 12–9–6—*Powers and duties of director as to air quality generally,* 12–9–12—*Injunctive relief,* 12–9–13—*Proceedings for enforcement,* and 12–9–14—*Powers of director in situations involving imminent and substantial danger to public health*), and Air Quality Control Rule 391–3–1–.04—''Air Pollution Episodes.'' O.C.G.A. Section 12–9–2 provides ''[i]t is declared to be the public policy of the state of Georgia to preserve, protect, and improve air quality . . . to attain and maintain ambient air quality standards so as to safeguard the public health, safety, and welfare.'' O.C.G.A. Section 12–9–6(b)(10) provides the Director of GA EPD authority to ''issue orders as may be necessary to enforce compliance with [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)] and all rules and regulations of this article.'' O.C.G.A. Section 12–9–12 provides that ''[w]henever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)], he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with this article. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy of law.'' O.C.G.A. Section 12–19–13 specifically pertains to enforcement proceedings when the Director of GA EPD has reason to believe that a violation of any provision of the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A), or environmental rules, regulations, or orders have occurred. O.C.G.A. Section 12–9–14 also provides that the Governor may issue orders as necessary to protect the health of persons who are, or may be, affected by a pollution source or facility after ''consult[ation] with local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking.''

Georgia's Air Quality Control Rule 391–3–1–.04—''*Air Pollution Episodes*'' provides that the Director of GA EPD ''will proclaim that an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency exists when the meteorological conditions are such that an air stagnation condition is in existence and/or the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons in the specific area affected.'' Collectively the cited provisions provide that Georgia demonstrates authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority in the State.

North Carolina

North Carolina's infrastructure SIP submission cites to 15A NCAC 2D .0300—''*Air Pollution Emergencies*'' as identifying air pollution emergency episodes and preplanned abatement strategies and provides the means to implement emergency air pollution episode measures. Under NCGS 143–215.3(a)(12)—*General powers of Commission and Department; auxiliary powers,* if NC DENR finds that such a ''condition of . . . air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department [NC DEQ] with the concurrence of the Governor, shall order persons causing or contributing to the . . . air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes.'' In addition, NCGS 143–215.3(a)(12) provides NC DEQ with the authority to declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs and state laws are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) SIP Revisions: Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

Georgia

GA EPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Georgia. The State has the ability and authority to respond to calls for SIP revisions and has provided SIP revisions over the years for implementation of the NAAQS. O.C.G.A. Sections 12–9–6(b)(12) and 12–9–6(b)(13) provide Georgia with the authority to conduct certain actions in support of this infrastructure element. O.C.G.A. Section 12–9–6(b)(13) provides authority to GA EPD to develop, amend, modify, and submit a comprehensive plan or plans sufficient to comply with the CAA. O.C.G.A. Section 12–9–6(b)(l2) authorizes GA EPD to exercise all incidental powers necessary to carry out the Georgia Air Quality Act, which includes achieving and maintaining NAAQS.

North Carolina

NC DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in North Carolina. NCGS 143–215.107(a)(1) and (a)(10) grant NC DAQ with the authority to prepare and develop, after proper study, a comprehensive plan for the prevention of air pollution and implement the CAA, respectively. These provisions provide NC DAQ the ability and authority to respond to calls for SIP revisions, and North Carolina has provided number of SIP revisions over the years for implementation of the NAAQS. In addition, 15A NCAC 2D .2401(d) states that ''[t]he EMC may specify through rulemaking a specific emission limit lower than that established under this rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or any other ambient air quality standard in Section 15A NCAC 2D .0400.''

EPA has made the preliminary determination that Georgia and North Carolina adequately demonstrate a commitment to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) Consultation with government officials, public

notification, and PSD and visibility protection:

EPA is proposing to approve Georgia's and North Carolina's infrastructure SIPs for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121 and the public notification requirements of section 127.

With regard to the visibility protection element of section 110(a)(2)(J), EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that Georgia and North Carolina are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. As such, Georgia's and North Carolina's infrastructure SIP submissions related to the 2015 8-hour ozone NAAQS do not address the visibility protection element of section 110(a)(2)(J).

With regard to consultation, Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation requirements of section 121, the public notification requirements of section 127, and PSD. EPA's rationale for the remaining sub-elements for Georgia and North Carolina are described below.

Georgia

Consultation with government officials (121 consultation): GA EPD cited to O.C.G.A. Section 12–9–5(b)(17), Georgia Administrative Procedures Act (O.C.G.A. § 50–13–4), and Georgia's Air Quality Control Rule 391–3–1–.02(7) as it relates to visibility protection for this requirement. O.C.G.A. Section 12–9–5(b)(17) states that the Board of Natural Resources is to ''establish satisfactory processes of consultation and cooperation with local governments or other designated organizations of elected officials or federal agencies for the purpose of planning, implementing, and determining requirements under this article to the extent required by the federal act.'' Georgia also cited to transportation conformity SIP revisions approved by EPA on April 7, 2000 (*see* 65 FR 18245)—that contain state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Georgia's consultation procedures include federal, state, and local transportation and air quality agency officials.

Public notification: With respect to public notification, section 110(a)(2)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. GA EPD has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. GA EPD's Ambient Monitoring web page (*www.georgiaair.org/amp*) provides information regarding current and historical air quality across the State. Daily air quality forecasts may also be disseminated to the public in Atlanta through the Georgia Department of Transportation's electronic billboards. In its SIP submission, Georgia also notes that the non-profit organization in Georgia named ''Clean Air Campaign'' disseminates statewide air quality information and ways to reduce air pollution. Georgia Rule 391–3–1–.04—''Air Pollution Episodes'' enables the State to conduct certain actions in support of this infrastructure element. In addition, the following State statutes provide Georgia with the authority to make public declarations about air pollution episodes in support of this infrastructure element. O.C.G.A. 12–9–6(b)(8) provides authority to the Georgia Board of Natural Resources ''[t]o collect and disseminate information and to provide for public notification in matters relating to air quality''.

PSD: With regard to the PSD element of section 110(a)(2)(J), EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Georgia's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

North Carolina

Consultation with government officials (121 consultation): Rules 15A NCAC 2D.1600—*General Conformity,* 15A NCAC 2D .2000—''*Transportation Conformity,*'' and 15A NCAC 2D .0531—''*Sources in Nonattainment Areas,*'' along with the State's Regional Haze Implementation Plan, provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Regarding conformity, North Carolina adopted state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires NC DAQ to consult with Federal, state, and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. The Regional Haze SIP provides for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs.

Public notification: With respect to public notification, section 110(a)(2)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. Rule 15A NCAC 2D .0300—''*Air Pollution Emergencies*'' provides North Carolina with the authority to declare an emergency and notify the public accordingly when it finds a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Additionally, NC DAQ has the North Carolina Air Awareness Program which is a program to educate the public on air quality issues and promote voluntary emission reduction measures. NC DAQ also features a web page providing ambient monitoring information regarding current and historical air quality across the State at *http://www.ncair.org/monitor/.* North Carolina participates in EPA's Air NOW program, which enhances public awareness of air quality in North Carolina and throughout the country.

PSD: With regard to the PSD element of section 110(a)(2)(J), EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to North Carolina's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

EPA has made the preliminary determination that Georgia's and North Carolina's SIPs and practices adequately demonstrate that the States meets applicable requirements related to consultation with government officials, and the ability to provide public notification of section 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. Thus, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIPs for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) for these provisions.

11. 110(a)(2)(K) Air Quality Modeling and Submission of Modeling Data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that

effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made.

Georgia

O.C.G.A. Section 12–9–6(b)(13) provides GA EPD with the authority to conduct modeling actions and to submit air quality modeling data to EPA in support of this element as part of comprehensive planning to achieve and maintain the NAAQS. GA EPD also states that it has personnel with training and experience to conduct photochemical modeling to assess attainment of the ozone NAAQS.

Additionally, Georgia supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Georgia's submission demonstrates that Georgia has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2015 8-hour ozone NAAQS.

North Carolina

Rule 15A NCAC 2D .0600—''*Monitoring: Recordkeeping: Reporting*'' (authorized under NCGS 143–215.107(a)(4)) requires sources to provide information needed to model potential impacts on air quality. NCGS 143–215.107(a) also provides authority for the EMC to determine by means of field sampling and other studies, the degree of air contamination and air pollution in the state. Collectively, these regulations demonstrate that North Carolina has the authority to perform air quality modeling and to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2015 8-hour ozone NAAQS. The submittal also states that DAQ currently has personnel with training and experience to conduct source-oriented dispersion modeling that would likely be used in $PM_{2.5}$ NAAQS applications with models approved by EPA.

Additionally, North Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, North Carolina's air quality regulations and practices demonstrate that DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to EPA upon request.

EPA has made the preliminary determination that Georgia's and North Carolina's SIP submissions and practices adequately demonstrate the States' ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) Permitting Fees: This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by EPA's approval of a fee program under title V.

Georgia

Georgia's PSD and NNSR permitting programs are funded with title V fees. Georgia Rule 391–3–1–.03(9)—''*Permit Fees.*'' incorporates EPA-approved title V fee program. Georgia's authority to mandate funding for processing PSD and NNSR permits is found in O.C.G.A. 12–9–10. The State notes that these title V operating program fees cover the reasonable cost of implementation and enforcement of PSD and NNSR permits after they have been issued.

North Carolina

North Carolina's infrastructure SIP submission cites to 15A NCAC 02Q .0200—''*Permit Fees,*'' which requires the owner or operator of source holding a permit to pay to the permitting authority a sufficient fee to cover the costs of the permitting program. The 15A NCAC 2Q .0500 rules contain the State's title V program [13] and conditions which include provisions to implement and enforce PSD and NNSR permits once these permits have been issued. NCGS 143–215.3—*General powers of Commission and Department; auxiliary Powers,* provides authority for NC DAQ to require a processing fee in an amount sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits.

EPA has made the preliminary determination that Georgia's and North Carolina's SIP submissions and practices adequately provide for permitting fees related to the 2015 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) Consultation and Participation by Affected Local Entities: Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Georgia

Consultation and participation by affected local entities is authorized by O.C.G.A. 12–9–5(b)(17), which provides authority for the Board of Natural Resources to establish processes for consultation and cooperation with local entities for purposes of planning and implementing the CAA, Georgia's Air Quality Control Rule 391–3–1–.15—''*Transportation Conformity*'' defines the consultation procedures for areas subject to transportation conformity. Furthermore, GA EPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the development of its Transportation Conformity SIP and has worked with the FLMs as a requirement of the regional haze rule.

North Carolina

Under the North Carolina Administrative Procedures Act, all state rules go through a public review process (NCGS 150B–21.1 and 150B–21.2). Also, 15A NCAC 2D .2000—''*Transportation Conformity*'' requires a consultation with all affected partners to be implemented for transportation conformity determinations. Furthermore, NC DAQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the development of its Transportation Conformity SIP, Regional Haze Implementation Plan, and the 8-Hour Ozone Attainment Demonstration for the North Carolina portion of the Charlotte-Gastonia-Rock Hill NC–SC nonattainment area.

EPA has made the preliminary determination that Georgia's and North Carolina's SIP submissions and practices adequately demonstrate consultation with affected local entities

[13] Title V program regulations are federally-approved but not incorporated into the SIP.

related to the 2015 8-hour ozone NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to contribution to nonattainment or interference with maintenance in other states, and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), EPA is proposing to approve Georgia's and North Carolina's September 24, 2018 and September 27, 2018, SIP submissions for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements, respectively. EPA is proposing to approve Georgia's and North Carolina's infrastructure SIP submissions for certain requirements related to the 2015 8-hour ozone NAAQS because the submissions are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these proposed actions, are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 12, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–27691 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2, 60–300, and 60–741

RIN 1250–AA10

Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures To Resolve Potential Employment Discrimination

AGENCY: Office of Federal Contract Compliance Programs (OFCCP), Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Federal Contract Compliance Programs (''OFCCP'' or ''the agency'') proposes to codify procedures that the agency currently uses to resolve potential discrimination and other material violations of these laws by federal contractors and subcontractors; add clarifying definitions to specify the types of evidence OFCCP will use to support its discrimination findings; and, correct the title of OFCCP's agency head.

DATES: To be assured of consideration, comments must be received on or before January 29, 2020.

ADDRESSES: Comments may be submitted, identified by Regulatory Information Number (RIN) 1250–AA10, by any of the following methods:

- *Electronically:* The Federal eRulemaking portal: *http://www.regulations.gov.* Follow the instructions found on that website for submitting comments.
- *Mail, Hand Delivery, or Courier:* Addressed to Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions received must include OFCCP's name and RIN for this rulemaking. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* Receipt of submissions will not be acknowledged; however, the sender may request confirmation that a submission was received by telephoning OFCCP at (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers).

The Department will make all comments received, including any personal information provided, available for public inspection during normal business hours at Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed

above. To schedule an appointment to review the comments and/or to obtain this Notice of Proposed Rulemaking (NPRM) in an alternate format, please contact OFCCP at the telephone numbers or address listed above.

FOR FURTHER INFORMATION CONTACT:

Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY).

SUPPLEMENTARY INFORMATION:

I. Overview

The goal of this proposed rule is to provide federal contractors and subcontractors [1] with greater certainty about the procedures that OFCCP follows during compliance evaluations to resolve employment discrimination and other material violations found under Executive Order 11246, as amended (E.O. 11246); section 503 of the Rehabilitation Act, as amended, 29 U.S.C. 793 (section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA); and, their implementing regulations. The proposed rule would codify procedures for two formal notices that OFCCP uses when the agency finds potential violations: The Predetermination Notice (PDN) and the Notice of Violation (NOV). Since 1988, these procedures have been embedded in the Federal Contract Compliance Manual (FCCM), the primary document used by agency staff as a procedural framework to execute quality and timely compliance evaluations and complaint investigations. Additionally, the proposal promotes efficiency by clarifying that contractors have the option to expedite OFCCP's normal resolution procedures for discrimination findings by entering directly into a conciliation agreement prior to issuance of a PDN or NOV, allowing for expedited conclusion to OFCCP's compliance evaluations. The proposed rule also clarifies the strength of evidence agency staff must find before issuing a PDN or NOV. Finally, the proposed rule would replace outdated references to the official title of OFCCP's agency head, from ''Deputy Assistant Secretary'' to ''Director.''

This proposed rule is expected to be an Executive Order (E.O.) 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

II. Background

OFCCP administers and enforces E.O. 11246, section 503, and VEVRAA, and their implementing regulations. Collectively, these laws require federal contractors to take affirmative action to ensure equal employment opportunity, and not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, E.O. 11246 prohibits a contractor from discharging or otherwise discriminating against applicants or employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

OFCCP determines whether a federal contractor has met these legal obligations during a compliance evaluation.[2] The agency uses a neutral process to schedule contractors for compliance evaluations.[3] A compliance evaluation consists of one or any combination of the following investigative procedures, as set forth in OFCCP's implementing regulations: Compliance review, offsite review of records, compliance check, or focused review.[4] With the exception of the compliance check, the purpose of which is solely to determine whether the contractor maintains required records, OFCCP may find that a contractor discriminated in hiring, promotion, termination, compensation, or other employment practices based on information collected during a compliance evaluation. Such findings, in most cases, must be supported by statistical evidence.

Preliminary findings of discrimination in a compliance evaluation trigger OFCCP's resolution procedures. When OFCCP finds sufficient evidence of discrimination, the agency sends a PDN to inform the contractor of the agency's preliminary findings.[5] To determine whether the evidence of discrimination is sufficient to warrant a PDN, OFCCP considers whether an employment or compensation disparity identified during the compliance evaluation is both practically and statistically significant.[6] OFCCP uses a number of tests to determine whether an employment selection or compensation practice has enough statistical significance to support a conclusion of discrimination.[7] The most familiar test is the standard deviation test. The standard deviation test represents a standardized measure of the difference between two selection rates, and employment discrimination case law has adopted confidence levels that are similar to those accepted among social scientists. The U.S. Supreme Court has described an outcome as ''suspect to a social scientist'' when a statistic from ''large samples'' falls more than ''two or three standard deviations'' from its expected value under a null hypothesis of neutrality.[8] The greater the number of

[1] Hereinafter, the terms ''contractor'' and ''federal contractor'' are used to refer to contractors and subcontractors with direct federal contracts and/or federally assisted construction contracts, unless otherwise expressly stated.

[2] OFCCP also ensures compliance with these laws by investigating complaints filed by applicants and employees who believe that a federal contractor discriminated against them. However, the resolution procedures for complaints differ from compliance evaluations and would not be altered by this proposed rule. For complaint resolution procedures, see FCCM Chapter 6 and 41 CFR 60–1.24, 41 CFR 60–300.61, and 41 CFR 60–741.61. The FCCM is available at *https://www.dol.gov/ofccp/regs/compliance/fccm/fccmanul.htm* (last accessed Aug. 5, 2019).

[3] The majority of OFCCP's compliance evaluations are for supply and service contractors. OFCCP increased the number of contractors on its supply and service scheduling list over the past three fiscal years, from 801 in FY 2017 to 3,500 in FY 2019. A description of OFCCP's current scheduling methodology for supply and service contractors is available on the agency's website at *https://www.dol.gov/ofccp/scheduling/* (last accessed Aug. 12, 2019). The neutral scheduling process for construction contractors is currently under review by OFCCP.

[4] *See* 41 CFR 60–1.20(a), 60–300.60(a) and 60–741.60(a). The resolution procedures described in this proposed rule would not apply to compliance checks.

[5] *See* Directive 2018–01, ''Use of Predetermination Notices (PDN)'' (Feb. 27, 2018). OFCCP issued this directive to ensure that PDNs be used in all compliance evaluations with preliminary discrimination findings, both individual and systemic. OFCCP directives are available at *https://www.dol.gov/ofccp/regs/compliance/directives/dirindex.htm* (last accessed Aug. 5, 2019). Prior to the directive, use of PDNs was discretionary and reserved for systemic discrimination findings. *See* FCCM, Chapter 8, Resolution of Noncompliance (Oct. 2014) (detailing the procedures that OFCCP follows for issuing PDNs).

[6] In the EEO context, practical significance refers to whether an observed disparity in employment opportunities or outcomes reflects meaningful harm to the disfavored group. The concept focuses on the contextual impact or importance of the disparity rather than its likelihood of occurring by chance. OFCCP recently published guidance on how it applies statistical and practical significance to evaluate compliance evaluations with potential discrimination. *See* OFCCP's Practical Significance Frequently Asked Questions at *https://www.dol.gov/ofccp/regs/compliance/faqs/PracticalSignificanceEEOFAQs.htm#Q5* (last accessed October 1, 2019).

[7] Some examples of the statistical measures that OFCCP may use are the Chi square, Fisher's exact, Z-test, and standard deviation.

[8] *See Castaneda* v. *Partida,* 430 U.S. 482, 496 n.17 (1977) (''As a general rule for large samples, if the difference between the expected value and the observed number is greater than two or three standard deviations, then the hypothesis that the

standard deviations, the less likely the difference was produced by chance (*e.g.,* 5.0 standard deviations represents a less than 1 in 1.7 million probability that the occurrence happened by chance). OFCCP conducts regression analyses of hiring and compensation outcomes which control for major, measurable variables, to determine the probability of hiring and compensation outcomes occurring by chance. OFCCP will issue PDNs in matters premised on statistical evidence only if the variable of interest is statistically significant and the probability value (''p value'') is less than 0.05 (roughly equivalent to two standard deviations) if there is corroborating nonstatistical evidence, or 0.01 (roughly equivalent to three standard deviations) in the absence of corroborating nonstatistical evidence.[9] This approach is in keeping with—neither compelled nor prohibited by—Title VII and OFCCP case law, which generally holds that two or more standard deviations is sufficient to establish a prima facie case of discrimination.[10]

Statistical evidence plays a crucial role in OFCCP's enforcement. The proposed rule is intended to provide clarity and transparency in OFCCP's methods. OFCCP requests comments for improving certainty in setting parameters for statistical evidence, including methodologies, minimum sample sizes, data groupings, methodological limitations, and ways to improve objectivity.

Before issuing a PDN, the agency also considers whether nonstatistical evidence, such as a cohort analysis, demonstrates an intent to discriminate. In some cases, however, when statistical evidence is very strong, OFCCP may issue the PDN without nonstatistical evidence. There may be other factors applicable in a particular case which explain why OFCCP could not uncover nonstatistical evidence during its investigation despite the strength of the statistical evidence. Additionally, OFCCP may find similar patterns of disparity in multiple years or at multiple establishments of a federal contractor that warrant issuing a PDN without nonstatistical evidence. In practice, as an exercise of enforcement discretion, OFCCP will pursue matters where the statistical data are not corroborated by nonstatistical evidence of discrimination only if the statistical evidence is exceptionally strong.[11]

OFCCP issues the PDN to encourage communication with contractors and provide them an opportunity to respond to preliminary findings prior to the issuance of a more formal NOV. If a contractor does not sufficiently rebut the preliminary findings identified in the PDN that evidence of unlawful discrimination exists, OFCCP issues the NOV to notify the contractor that the agency found discrimination violations of one or more of the laws it enforces.

The NOV, also a letter, lists the corrective actions that are required to resolve those violations, and invites conciliation.[12] After issuing the NOV, OFCCP generally pursues a written conciliation agreement with any contractor willing to correct the violation or deficiency identified in the NOV.[13] A conciliation agreement is a binding written agreement between a contractor and OFCCP that details specific contractor commitments, actions, or both to resolve the violations set forth in the agreement.[14] Conciliation agreements were codified in OFCCP's regulations in 1979.[15] If the contractor is unwilling to enter into a conciliation agreement to correct the violations, OFCCP issues a show cause notice (SCN) requiring the contractor to provide reasons demonstrating why formal enforcement proceedings by the Solicitor of Labor or other appropriate action should not be instituted.[16] This proposed rule would codify the PDN and NOV as procedures that have proven effective to remedy findings of discrimination.[17]

Similarly, material violations that are not discriminatory in nature also trigger OFCCP's resolution procedures for compliance evaluations.[18] Rather than initiating resolution with a PDN for violations that do not involve discrimination, OFCCP generally begins the process with a NOV before proceeding to a conciliation agreement, or the SCN as a last resort.[19] With this proposed rule, OFCCP would codify use of the NOV for all material violations.

Additionally, this proposed rule clarifies that federal contractors have

jury drawing was random would be suspect to a social scientist.''). *See also Hazelwood School Dist.* v. *United States,* 433 U.S. 299, 311 n.17 (1977) (providing that ''a fluctuation of more than two or three standard deviations would undercut the hypothesis that decisions were being made randomly with respect to race'').

[9] The p value confidence level is similar to the confidence level associated with the standard deviation test. A p value of less than 0.05 indicates that there is a less than five percent likelihood that an observed disparity occurred by chance, and a standard deviation of two shows a less than 4.55 percent likelihood that an observed disparity occurred by chance.

[10] *See* fn 8, *supra; see also, e.g., Adams* v. *Ameritech Servs., Inc.,* 231 F.3d 414, 424 (7th Cir. 2000) (''Two standard deviations is normally enough to . . . giv[e] rise to a reasonable inference that the hiring was not race-neutral; the more standard deviations away, the less likely the factor in question played no role in the decisionmaking process.''); *Malave* v. *Potter,* 320 F.3d 321, 327 (2d Cir. 2003) (vacating summary judgment for employer and instructing district court to determine whether the plaintiff can show ''a statistically significant disparity of two standard deviations''); *Anderson* v. *Zubieta,* 180 F.3d 339–40 (D.C. Cir. 1999) (''Many of the disparities are far in excess of 1.96 standard deviations. Under our case law, this level of statistical significance is sufficient to establish a prima facie case of both disparate treatment and disparate impact.'' (citations omitted)); *OFCCP* v. *Bank of America,* No. 1997–OFC–016, slip op. at 9, 2016 WL 2941106 (Dep't of Labor Apr. 21, 2016) (''Courts have consistently found significance in disparities exceeding the two standard deviation mark. See *Hazelwood School Dist.* v. *U.S.,* 433 U.S. 299, 308, n.14 (1977); *Adams* v. *Ameritech,* 231 F.3d 414, 424 (7th Cir. 2000). . . . The more severe the statistical disparity, the less additional evidence is needed to prove that the reason was race discrimination. Very extreme cases of statistical disparity may permit the trier of fact to conclude intentional race discrimination occurred without needing additional evidence.'' (citations omitted)).

[11] The proposed rule clarifies that, absent nonstatistical evidence, OFCCP will only pursue a matter when discrimination is indicated by statistically significant evidence at the 99 percent confidence level (*i.e.,* three standard deviations, or a p value of 0.01 or less). Note, however, that for multiple findings of discrimination without nonstatistical evidence present at a given contractor establishment, or at multiple facilities of the same contractor, OFCCP may issue a PDN where at least one finding is supported by statistically significant evidence at the 99 percent confidence level and may include additional findings that are supported by statistically significant evidence at the 95 percent confidence level (*i.e.,* two standard deviations, or a p value of 0.05 or less) or above.

[12] *See* FCCM Chapter 8, Resolution of Noncompliance and Key Terms and Phrases (Oct. 2014).

[13] In rare circumstances, OFCCP may determine that settlement is not appropriate and refer a matter at this stage directly to the Office of the Solicitor of Labor to pursue formal enforcement proceedings rather than pursuing a conciliation agreement. *See* 41 CFR 60–1.26(b), 60–300.62, 60–300.65(a), 60–741.62(a). 60–741.65(a).

[14] *See* FCCM, Key Terms and Phrases and 41 CFR 60–1.33, 60–300.62, and 60–741.62.

[15] *See Compliance Responsibility for Equal Employment Opportunity,* 44 FR 77000 (Dec. 28 1979).

[16] *See* 41 CFR 60–1.28, 60–300.64, and 60–741.64. *See also,* FCCM Chapter 8, Resolution of Noncompliance.

[17] The NOV and PDN have been included in the FCCM since 1988. As an example of their effectiveness, OFCCP obtained $44 million for more than 37,000 employees and job seekers between January 2017 and December 2019 using these resolution procedures.

[18] FCCM Chapter 8F00, When to Use a Notice of Violation and Chapter 8H00, When to Use a Conciliation Agreement (Oct. 2014). For example, OFCCP may issue a NOV and enter into a CA for failure to maintain records in accordance with 41 CFR 60–1.12, 41 CFR 60–300.80, and 41 CFR 60–741.80, or for failure to maintain affirmative action programs as required by 41 CFR part 60–2, 41 CFR part 60–300, subpart C, and 41 CFR part 60–741, subpart C.

[19] In some instances, OFCCP issues the SCN without first issuing a NOV for material violations that are non-discriminatory in nature. *See* FCCM Chapter 8D01, When a Show Cause Notice is Required (Oct. 2014) (explaining that OFCCP issues the SCN without first issuing a NOV when a contractor fails to provide the records, information, or data requested in the scheduling letter and when the contractor refuses to provide access to its premises for an onsite review).

the option to bypass the PDN and NOV procedures to enter directly into a conciliation agreement when there are preliminary findings of material violations, regardless of whether those violations involve discrimination. This option for conciliation may suit contractors who wish to expedite the resolution of discrimination or other material violations. Recently, OFCCP has sought to incentivize the efficient resolution of material violations for multi-establishment federal contractors with early resolution procedures.[20] The proposed rule would further the agency's efforts to improve efficiency, codifying an expedited option for resolution that would apply to compliance reviews in their early stages.

To further these efficiency objectives and to provide greater certainty to federal contractors, the proposed rule also defines ''statistical evidence'' and ''nonstatistical evidence'' to clarify the different types of evidence OFCCP will use to support a PDN or NOV. Specifically, statistical evidence should be based on hypothesis testing related to the probability of the allegedly discriminatory outcome occurring by chance, at the confidence levels accepted in relevant employment discrimination case law.[21] The standard deviation represents a standardized measure of the difference between two rates. As mentioned above, the greater the number of standard deviations, the less likely the difference was produced by chance (*e.g.,* 5.0 standard deviations represents a less than 1 in 1.7 million probability that the occurrence happened by chance). In support of an OFCCP discrimination PDN or NOV, a statistician can conclude that a variable of interest is statistically significant if, controlling for major, measurable variables, a disparity exists that is greater than two standard deviations (equivalent to a p value of less than 0.05 and a confidence value of 95 percent or higher). As noted in the proposed regulatory text and preamble discussion regarding predetermination notices, for matters without nonstatistical evidence, OFCCP will only pursue matters if the statistical evidence shows a disparity of at least three standard deviations or a p value of .01 or less. The definition of ''statistical evidence'' provides a nonexhaustive list of variables frequently used by employers that OFCCP's regression analyses will control for, as appropriate, in its analyses. This provides greater clarity to the contractor community regarding OFCCP's analytical methods while providing OFCCP the flexibility to exclude variables from its analyses that, consistent with established statistical methods, may be inappropriate to include, such as those that are discriminatory.

In addition to codifying resolution procedures, the proposed rule replaces outdated references to the official title of OFCCP's agency head in E.O. 11246 regulations, from ''Deputy Assistant Secretary'' to ''Director.'' OFCCP made the same change to the regulations implementing VEVRAA and section 503 through final rules in 2013.[22] OFCCP made this change after the Department of Labor abolished the Employment Standards Administration. This restructuring resulted in the change of title for OFCCP's agency head, from ''Deputy Assistant Secretary'' (reporting to the head of the Employment Standards Administration) to ''Director'' reporting directly to the Secretary of Labor.

III. Statement of Legal Authority

Issued in 1965, and amended several times in the intervening years, E.O. 11246 has two principal purposes. First, it prohibits covered Federal contractors and subcontractors from discriminating against employees and applicants because of race, color, religion, sex, sexual orientation, gender identity, national origin, or because they inquire about, discuss, or disclose their compensation or that of others subject to certain limitations. Second, it requires covered Federal contractors and subcontractors to take affirmative action to ensure equal employment opportunity. The nondiscrimination and affirmative action obligations of Federal contractors and subcontractors cover all aspects of employment.

The requirements in E.O. 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that combined total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. Supply and service contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–2. Construction contractors have different affirmative action requirements under E.O. 11246 at 41 CFR part 60–4.

Enacted in 1973, and amended since, the purpose of section 503 is twofold. First, section 503 prohibits employment discrimination on the basis of disability by Federal contractors and subcontractors. Second, it requires each covered Federal contractor and subcontractor to take affirmative action to employ and advance in employment qualified individuals with disabilities. The requirements in section 503 generally apply to any business or organization that holds a single Federal contract or subcontract in excess of $15,000.[23] Contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–741, subpart C.

Enacted in 1974 and amended in the intervening years, the purpose of VEVRAA is twofold. First, VEVRAA prohibits federal contractors and subcontractors from discriminating against employees and applicants because of status as a protected veteran (defined by the statute to include disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and active duty wartime or campaign badge veterans).[24] Second, it requires each covered Federal contractor and subcontractor to take affirmative action to employ and advance in employment these veterans. The requirements in VEVRAA generally apply to any business or organization that holds a single Federal contract or

[20] *See* Directive 2019–02, ''Early Resolution Procedures'' (Nov. 30, 2018), available at *https://www.dol.gov/ofccp/regs/compliance/directives/dirindex.htm* (last accessed Sept. 27, 2019). The proposed rule would not codify OFCCP's early resolution procedures per se. It would, however, allow OFCCP and contractors to explore expedited conciliation options, such as the early resolution procedures set forth in Directive 2019–02.

[21] *Castaneda* v. *Partida,* 430 U.S. 482, 496 n.17 (1977); *Hazelwood School Dist.* v. *United States,* 433 U.S. 299, 311 n.17 (1977).

[22] *Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,* 78 FR 58613 (Sept. 24, 2013), and *Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities,* 78 FR 58681 (Sept. 24, 2013).

[23] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; *Inflation Adjustment of Acquisition-Related Thresholds,* 75 FR 53129 (Aug. 30, 2010).

[24] Since the statute was enacted, OFCCP's regulations have further defined ''protected veteran'' to include ''active duty wartime or campaign badge veterans.'' *See,* 41 CFR 60–300.2(a) and (q).

subcontract in excess of $150,000.[25] Contractors with 50 or more employees and a single Federal contract or subcontract of $150,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–300, subpart C.

Pursuant to these laws, receiving a Federal contract comes with a number of responsibilities. Contractors are required to comply with all provisions of these laws as well as the rules, regulations, and relevant orders of the Secretary of Labor. Where OFCCP finds potential noncompliance concerns under any of the three laws or their implementing regulations it utilizes established procedures to either facilitate resolution,[26] or proceed to administrative enforcement as necessary to secure compliance.[27] A contractor found in violation who fails to engage in appropriate resolution procedures may have its contracts canceled, terminated, or suspended and/or may be subject to debarment after the opportunity for a hearing.[28]

IV. Proposed Revisions

This rulemaking proposes to update outdated references to the head of the agency from ''Deputy Assistant Secretary'' to the correct title of ''Director'' throughout the entirety of 41 CFR parts 60–1 and 60–2. It also proposes to add two new definitions and revise a definition in part 60–1, and update parts 60–1, 60–300 and 60–741 to codify established policy and procedures for resolving discrimination and other material violations.

Revised Sections

41 CFR Part 60–1—Obligations of Contractors and Subcontractors

Several sections will be revised throughout 41 CFR part 60–1 because all instances of ''Deputy Assistant Secretary'' would be replaced with the term ''Director.'' The revised sections would include 41 CFR 60–1.2, 60–1.5, 60–1.7, 60–1.9, 60–1.10, 60–1.21, 60–1.23, 60–1.24, 60–1.25, 60–1.26, 60–1.27, 60–1.28, 60–1.29, 60–1.30, 60–1.31, 60–1.41, 60–1.42, 60–1.43, and 60–1.46. These revisions would correct part 60–1 to the current title for the head of OFCCP.

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Section 60–1.3 Definitions

For this section, the NPRM proposes to add two definitions and replace a definition. The term ''Nonstatistical evidence'' would be added to codify the definition OFCCP uses in guidance.[29] The term ''Statistical evidence'' clarifies the necessary support for OFCCP to determine that there is a statistically significant disparity caused by an employment action or compensation decision. Both terms are germane to the resolution procedures that this NPRM proposes to codify.

OFCCP would also replace the definition of ''Deputy Assistant Secretary'' in this section with the definition of ''Director'' published in OFCCP's regulations implementing VEVRAA and section 503.[30]

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

Section 60–1.33 Conciliation Agreements

The NPRM proposes to revise § 60–1.33 by changing the title to ''Resolution Procedures'', and incorporating three new subsections: ''Predetermination Notice,'' ''Notice of Violation,'' and ''Expedited Conciliation Option.'' The resolution procedures would be in the following order: ''Predetermination Notice,'' ''Notice of Violation,'' ''Conciliation Agreements'', and ''Expedited Conciliation Option.''

This revised section would bring the resolution procedures described in the regulations in line with the longstanding resolution procedures that OFCCP utilizes. The update would codify use of the PDN to resolve discrimination violations, would codify the use of the NOV and an expedited conciliation option to resolve discrimination and other material violations, and would codify the types of evidence necessary to find discrimination violations for a PDN or NOV.

41 CFR Part 60–2—Affirmative Action Programs

All instances of ''Deputy Assistant Secretary'' and ''DAS'' will be replaced throughout this part with the term ''Director.'' Specifically, the following sections will be revised: §§ 60–2.1, 60–2.2, and 60–2.31. These revisions would correct part 60–2 to the current title for the head of OFCCP.

41 CFR Part 60–300—Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

Subpart A—Preliminary Matters; Equal Opportunity Clause

Section 60–300.2 Definitions

For this section, the NPRM proposes to add definitions. The terms ''Nonstatistical evidence'' and ''Statistical evidence'' would be added for the same reasons as proposed for section 60–1.3.

Subpart D—General Enforcement and Complaint Procedures

Section 60–300.62 Conciliation Agreements

The NPRM proposes to revise section 60–300.62 in the same manner as section 60–1.33: changing the title to ''Resolution Procedures,'' and incorporating three new subsections: ''Predetermination Notice,'' ''Notice of Violation,'' and ''Expedited Conciliation Option.'' The resolution procedures would be in the following order: ''Predetermination Notice,'' ''Notice of Violation,'' ''Conciliation Agreements,'' and ''Expedited Conciliation Option.''

41 CFR Part 60–741—Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals With Disabilities

Subpart A—Preliminary Matters; Equal Opportunity Clause

Section 60–741.2 Definitions

For this section, the NPRM proposes to add definitions. The terms ''Nonstatistical evidence'' and ''Statistical evidence'' would be added for the same reasons as proposed for section 60–1.3.

Subpart D—General Enforcement and Complaint Procedures

Section 60–741.62 Conciliation Agreements

The NPRM proposes to revise section 60–741.62 in the same manner as section 60–1.33: changing the title to ''Resolution Procedures,'' and incorporating three new subsections: ''Predetermination Notice,'' ''Notice of

[25] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; *Inflation Adjustment of Acquisition-Related Thresholds,* 80 FR 38293 (July 2, 2015).

[26] FCCM Chapter 8, Directive 2018–01, Directive 2019–02, 41 CFR 60–1.28, 60–1.33, 60–300.62, 60–300.64, 60–741.62, and 60–741.64.

[27] 41 CFR 60–1.26, 60–300.65, and 60–741.65.

[28] 41 CFR 60–1.27, 60–300.66, and 60–741.66.

[29] Directive 2018–05, ''Analysis of Contractor Compensation Practices During a Compliance Evaluation'' (Aug. 24, 2018), available at *https://www.dol.gov/ofccp/regs/compliance/directives/dirindex.htm* (last accessed May 16, 2019).

[30] 41 CFR parts 60–300 and 60–741, respectively.

Violation,'' and ''Expedited Conciliation Option.'' The resolution procedures would be in the following order: ''Predetermination Notice,'' ''Notice of Violation,'' ''Conciliation Agreements,'' ''Remedial Benchmarks,'' and ''Expedited Conciliation Option.''

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of Executive Order 12866 and OMB review. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order 12866 and has reviewed the proposed rule.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Need for the Regulation

The proposed regulatory changes are needed to provide certainty regarding the procedures that OFCCP follows during compliance evaluations to resolve employment discrimination and other material violations. The proposed rule is designed to codify procedures for two formal notices, the PDN and the NOV, used by OFCCP when the agency finds potential violations. The proposal promotes efficiency by clarifying that contractors have the option to expedite OFCCP's normal resolution procedures for discrimination findings by entering directly into a conciliation agreement prior to issuance of a PDN or NOV, allowing for a quicker conclusion to OFCCP's compliance evaluations.

Discussion of Impacts

In this section, the Department presents a summary of the costs associated with the clarified procedures proposed in this notice of proposed rulemaking. The Department determined that there are approximately 420,000 entities registered in the General Services Administration's System for Award Management (SAM) database.[31] Entities registered in the SAM database consist of contractor firms, and other entities such as state and local governments and other organizations that are interested in federal contracting opportunities, and other forms of federal financial assistance. The total number of entities in the SAM database fluctuates and is posted on a monthly basis. The current database includes approximately 420,000 entities. Thus, the Department determines that 420,000 entities are a reasonable representation of the number of entities that may or may not be affected by the proposed rule. This SAM number, however, likely results in an overestimation for two reasons: The system captures firms that do not meet the jurisdictional dollar thresholds for the three laws that OFCCP enforces, and it captures contractor firms for work performed outside the United States by individuals hired outside the United States, over which OFCCP does not have authority. On the other hand, there is at least one reason to believe that the data may result in an underestimation because SAM data does not include all subcontractors.[32]

The estimated labor cost to contractors is reflected in Table 1, below. The mean hourly wage of Human Resources Managers (SOC 11–3121) is $60.91.[33] The Department adjusted this wage rate to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. The Department used a fringe benefits rate of 46 percent[34] and an overhead rate of 17 percent,[35] resulting in a fully loaded hourly compensation rate for Human Resources Managers of $99.28 ($60.91 + ($60.91 × 46 percent) + ($60.91 × 17 percent)).

Cost of Rule Familiarization

The Department acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for a new information collection requirement the estimated time it takes for contractors to review and understand the instructions for compliance. To minimize the burden, OFCCP will publish compliance assistance materials such as a fact sheet and answers to frequently asked questions.

The Department believes that human resources managers at each contractor firm would be the employees responsible for understanding the new regulation. Therefore, the Department estimates that it will take a minimum of 30 minutes (½ hour) for a human resources manager at each contractor firm to either read the proposed rule, or read the compliance assistance materials provided by OFCCP to learn more about the codified procedures. Consequently, the estimated burden for rule familiarization is 210,000 hours (420,000 contractor firms × ½ hour). The Department calculates the total estimated cost of rule familiarization as $20,848,800 (210,000 hours × $99.28/hour) in the first year, which amounts to a 10-year annualized cost of $2,372,928 at a discount rate of 3 percent (which is $5.65 per contractor firm) or $2,774,206 at a discount rate of 7 percent (which is $6.61 per contractor firm). The Department seeks public comments regarding the estimated number of firms that would review this rule, the estimated time to review the rule, and whether human resources

[31] U.S. General Services Administration, System for Award Management, data released in monthly files, available at *https://www.sam.gov* (last accessed Aug. 13, 2019). The SAM database is an estimate with the most recent download of data occurring August 2019.

[32] However, this underestimation may be partially offset because of the overlap among contractors and subcontractors; a firm may have a subcontract on some activities but have a contract on others and thus in fact be included in the SAM data.

[33] BLS, Occupational Employment Statistics, Occupational Employment and Wages, May 2018, *https://www.bls.gov/oes/current/oes_nat.htm* (last accessed Aug. 13, 2019).

[34] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $24.26 per hour worked in 2017, while benefit costs averaged $11.26, which is a benefits rate of 46 percent.

[35] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' (June 10, 2002), *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005* (last accessed Aug. 13, 2019).

managers would be the most likely staff members to review the rule. Table 1, below, reflects the estimated regulatory familiarization costs for the proposed rule.

TABLE 1—REGULATORY FAMILIARIZATION COST

Total number of contractors	420,000
Time to review rule	30 minutes
Human Resources Managers fully loaded hourly compensation	$99.28
Regulatory familiarization cost in the first year	$20,848,800
Annualized cost with 3 percent discounting	$2,372,928
Annualized cost per contractor with 3 percent discounting	$5.65
Annualized cost with 7 percent discounting	$2,774,206
Annualized cost per contractor with 7 percent discounting	$6.61

The proposed rule does not include any additional costs because it adds no new requirements. The perpetual annualized cost at 7 percent discounting is $1,068,622 in 2016 dollars.

Cost Savings

The Department expects contractors impacted by the rule will experience cost savings. Specifically, the clarity provided in the new definitions, as well as the clarity of OFCCP's procedures related to resolution of material violations, provides certainty to contractors of what is required as well as an option for contractors to more expeditiously resolve the violations.

If the proposed rule increases clarity for federal contractors, this impact most likely will yield cost savings to taxpayers (if contractor fees decrease because they do not need to engage third party representatives to interpret OFCCP's procedures and requirements). In addition, by increasing clarity for both contractors and for OFCCP enforcement, the proposed rule may reduce the number and costs of enforcement proceedings by making it clearer to both sides at the outset what is required by the regulation.

Benefits

Executive Order 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important, and states that agencies may consider such benefits. This rule has equity and fairness benefits, which are explicitly recognized in Executive Order 13563. The NPRM is designed to achieve these benefits by:

- Supporting more effective enforcement of the prohibition against employment discrimination;
- Increasing fairness for contractors by providing more transparency and certainty on the agency's resolution procedures;
- Providing more efficient remedies to workers victimized by employment discrimination by effectuating corporate-wide corrective actions in conciliation agreements that may reach more victims than standard establishment-based conciliation agreements; and
- Facilitating a more efficient option for contractors to resolve potential discrimination by providing notice of OFCCP's preliminary findings earlier in the compliance review process.

Analysis of Rulemaking Alternatives

In addition to the approach proposed in the NPRM, OFCCP considered alternative approaches. OFCCP considered leaving its resolution procedures described only in agency subregulatory guidance. Though OFCCP codified ''conciliation agreements'' in 1979, the agency's other resolution procedures, namely the PDN and NOV, have only been explained in subregulatory guidance. Maintaining the status quo has led OFCCP to inconsistent use of the PDN across agency offices, creating inefficiencies and leading to greater uncertainty for federal contractors. Though the agency has taken recent subregulatory measures to increase consistency and certainty, codifying these agency resolution procedures would have a stronger impact and promote more efficient enforcement of Executive Order 11246 than the status quo alternative.

OFCCP also considered revising its resolution procedures, but decided to codify them without modification. Creating new procedures would create new costs to train agency staff and familiarize contractors on the new procedures. Additionally, the longstanding procedures have proven effective as a means for the agency to communicate its findings to contractors and providing contractors an opportunity to respond, facilitating greater understanding and ultimately resolution. OFCCP seeks comments on other possible alternatives that would minimize the impact of this NPRM while still accomplishing the goals of this rule.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations and governmental jurisdictions subject to regulation.'' Public Law 96–354. The RFA requires agencies to consider the impact of a proposed regulation on a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must review whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See 5* U.S.C. 603. If the rule would, then the agency must prepare a regulatory flexibility analysis as described in the RFA.[36]

However if an agency determines that the rule would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The Department must determine the compliance costs of this proposed rule on small contractor firms, and whether these costs will be significant for a substantial number of small contractor firms (*i.e.,* small firms that enter into contracts with the federal government). If the estimated compliance costs for affected small contractor firms are less than 3 percent of small contractor firms' revenues, the Department considers it appropriate to conclude that this proposed rule will not have a significant economic impact on small contractor firms.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact. *See, e.g.,* 79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex). This threshold is also consistent with that sometimes used by other agencies. *See, e.g.,* 79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than 3 percent annually are not economically significant). The Department believes that its use of a 3 percent of revenues significance criterion is appropriate.

A standard definition of ''substantial'' impact has not been established; however, the EPA provided a determination chart to decide whether a

[36] *Id.*

substantial impact exists. If the percentage of all small entities subject to the rule that are experiencing a given economic impact (in this case 3 percent of revenue or greater) is greater than or equal to 15 percent of all entities within that industry, then the economic impact should be considered substantial. The Department has used a threshold of 15 percent of small entities in prior rulemakings for the definition of substantial number of small entities. *See, e.g.,* 79 FR 60633 (October 7, 2014, Establishing a Minimum Wage for Contractors). According to the Small Business Administration's (SBA's) Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, the determination of what constitutes a substantial number of small entities is open to interpretation, and is primarily dependent on the size of the industry.[37] Analysts should determine both the total number and percentage of regulated small entities experiencing significant economic impacts when determining whether a substantial number of small entities may be significantly affected.[38]

To analyze the proposed rule's impact on small contractor firms, the Department used as data sources the SBA's Table of Small Business Size Standards [39] and the U.S. Census Bureau's Statistics of U.S. Businesses (SUSB).[40] Since federal contractors are not limited to specific industries, the Department assessed the impact of this proposed rule across 19 industrial classifications. Because data limitations do not allow the Department to determine which of the small firms within these industries are federal contractors, the Department assumes that these small firms are not significantly different from the small federal contractors that will be directly affected by the proposed rule.

The Department used the following steps to estimate the cost of the proposed rule per small contractor firm as measured by a percentage of total annual receipts. First, the Department used Census SUSB data that disaggregates industry information by firm size in order to perform a robust analysis of the impact on small contractor firms. The Department applied the SBA small-business size standards to the SUSB data to determine the number of small firms in the affected industries. Then the Department used receipts data from the SUSB to calculate the cost per firm as a percentage of total receipts by dividing the estimated first year cost and the annualized cost per firm discounted at a 7 percent rate by the average annual receipts per firm. The methodology and results of two industries (construction and management of companies and enterprises) are presented in Tables 2 and 3.

In sum, the increased first year cost and annualized cost of compliance resulting from the proposed rule are *de minimis* relative to the revenue at small contractor firms no matter their size. All of the industries had a first year cost and annualized cost per firm as a percentage of receipts of less than 3 percent. For instance, the first year cost for the construction industry is estimated to range from 0.00 percent of revenue for firms that have average annual receipts of approximately $35.3 million to 0.09 percent of revenue for firms that have average annual receipts below $52,000. Likewise, the annualized cost for the construction industry is estimated to range from 0.00 percent of revenue for firms that have average annual receipts of approximately $35.3 million to 0.01 percent of revenue for firms that have average annual receipts below $52,000. Management of companies and enterprises is the industry with the highest relative first year costs, with a range of 0.00 percent for firms that have average annual receipts of approximately $2.3 million to 0.15 percent for firms that have average annual receipts below $31,000. With respect to the annualized costs for the management of companies and enterprises industry, the impact as a percentage of revenue ranges from 0.00 percent for firms that have average annual receipts of approximately $2.3 million to 0.02 percent for firms that have average annual receipts below $31,000.

Therefore, the Department does not expect this rule to have a significant economic impact on a substantial number of small entities. The annualized cost at a discount rate of 7 percent for rule familiarization is $6.61 per entity ($46.39 in the first year) which is far less than 1 percent of the annual revenue of the smallest of the small entities affected by the proposed rule. Accordingly, OFCCP certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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[37] *Small Business Administration, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (August 2017), https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf.*

[38] *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act (November 2006), section 2.7.2, https://www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf* (last accessed Sept. 27, 2019).

[39] *See https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf* (last accessed Sept. 27, 2019).

[40] *See https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html* (last accessed Sept. 27, 2019).

Table 2. Cost per Small Firm in the Construction Industry

Small Business Size Standard: $15 million - $36.5 million

	Number of Firms	Total Number of Employees	Annual Receipts	Average Receipts per Firm[1]	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts[2]	Annualized Cost per Firm with 7% Discounting	Annual Cost per Firm as Percent of Receipts[3]
Firms with sales/receipts/revenue below $100,000	119,538	N/A	$6,116,019,000	$51,164	$46.39	0.09%	$6.61	0.01%
Firms with sales/receipts/revenue of $100,000 to $499,999	262,870	569,763	$67,195,728,000	$255,623	$46.39	0.02%	$6.61	0.00%
Firms with sales/receipts/revenue of $500,000 to $999,999	100,006	466,370	$70,808,134,000	$708,039	$46.39	0.01%	$6.61	0.00%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	85,343	742,370	$133,337,229,000	$1,562,369	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	35,670	585,723	$123,598,328,000	$3,465,050	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	12,306	327,911	$74,430,329,000	$6,048,296	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	6,179	214,777	$52,933,597,000	$8,566,693	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue o $10,000,000 to $14,999,999	6,752	299,412	$80,939,071,000	$11,987,422	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	3,272	190,075	$55,527,769,000	$16,970,590	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	2,002	136,366	$43,498,052,000	$21,727,299	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $25,000,000 to $29,999,999	1,365	107,700	$36,048,227,000	$26,408,958	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $30,000,000 to $34,999,999	909	80,081	$28,368,318,000	$31,208,271	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $35,000,000 to $39,999,999	638	64,770	$22,506,667,000	$35,276,908	$46.39	0.00%	$6.61	0.00%

N/A = not available, not disclosed

[1] In the case of construction firms with receipts below $100,000, the average receipts per firm ($51,164) was derived by dividing the total annual receipts ($6,116,019,000) by the number of firms (119,538).

[2] In the case of construction firms with receipts below $100,000, the first year cost per firm as percent of receipts (.09 percent) was derived by dividing the first year cost per firm ($46.39) by the average receipts per firm ($51,164).

[3] In the case of construction firms with receipts below $100,000, the annualized cost per firm as percent of receipts (.01 percent) was derived by dividing the annualized cost per firm ($6.61) by the average receipts per firm ($51,164).

Table 3. Cost per Small Firm in the Management of Companies and Enterprises Industry								
	Small Business Size Standard: $20.5 million							
	Number of Firms	Total Number of Employees	Annual Receipts	Average Receipts per Firm	First Year Cost per Firm with 7% Discounting	First Year Cost per Firm as Percent of Receipts	Annualized Cost per Firm with 7% Discounting	Annual Cost per Firm as Percent of Receipts
Firms with sales/receipts/revenue below $100,000	1,107	7,938	$33,849,000	$30,577	$46.39	0.15%	$6.61	0.02%
Firms with sales/receipts/revenue of $100,000 to $499,999	1,216	4,631	$251,252,000	$206,622	$46.39	0.02%	$6.61	0.00%
Firms with sales/receipts/revenue of $500,000 to $999,999	743	5,764	$285,686,000	$384,503	$46.39	0.01%	$6.61	0.00%
Firms with sales/receipts/revenue of $1,000,000 to $2,499,999	1,668	17,384	$783,830,000	$469,922	$46.39	0.01%	$6.61	0.00%
Firms with sales/receipts/revenue of $2,500,000 to $4,999,999	2,016	26,218	$1,395,007,000	$691,968	$46.39	0.01%	$6.61	0.00%
Firms with sales/receipts/revenue of $5,000,000 to $7,499,999	1,602	26,210	$1,567,547,000	$978,494	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $7,500,000 to $9,999,999	1,229	22,064	$1,528,733,000	$1,243,884	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue o $10,000,000 to $14,999,999	1,969	42,504	$2,727,035,000	$1,384,985	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $15,000,000 to $19,999,999	1,454	36,455	$2,687,284,000	$1,848,201	$46.39	0.00%	$6.61	0.00%
Firms with sales/receipts/revenue of $20,000,000 to $24,999,999	1,114	27,887	$2,617,195,000	$2,349,367	$46.39	0.00%	$6.61	0.00%

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Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. *See* 44 U.S.C. 3507(d). An agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. *See* 5 CFR 1320.5(b)(1).

OFCCP has determined that there is no new requirement for information collection associated with this proposed rule. The information collection contained in the existing Executive Order 11246 regulations are currently approved under OMB Control Number 1250–0001 (Construction Recordkeeping and Reporting Requirements) and OMB Control Number 1250–0003 (Recordkeeping and Reporting Requirements—Supply and Service). Consequently, this proposed rule does not require review by the Office of Management and Budget under the authority of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects

41 CFR Parts 60–1 and 60–2

Administrative practice and procedure, Civil rights, Discrimination, Employment, Equal employment opportunity, Government contracts, Government procurement, Labor.

41 CFR Parts 60–300 and 60–741

Administrative practice and procedure, Civil rights, Discrimination, Employment, Equal employment opportunity, Government contracts,

Government procurement, Individuals with disabilities, Labor, Veterans.

Craig E. Leen,

Director, Office of Federal Contract Compliance Programs.

For the reasons stated in the preamble, the Office of Federal Contract Compliance Programs proposes to amend 41 CFR parts 60–1, 60–2, 60–300, and 60–741 as follows:

PART 60–1 [AMENDED]

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

■ 2. In part 60–1, remove the words ''Deputy Assistant Secretary'' and adding in their place the word ''Director''.

■ 3. Amend § 60–1.3 by removing the definition for ''Deputy Assistant Secretary'' and adding definitions for ''Director'', ''Nonstatistical evidence'' and ''Statistical evidence'' in alphabetical order to read as follows:

§ 60–1.3 Definitions.

* * * * *

Director means the Director, Office of Federal Contract Compliance Programs of the United States Department of Labor, or his or her designee.

* * * * *

Nonstatistical evidence may include testimony about biased statements, remarks, attitudes, or acts based upon membership in a protected class; differential treatment through review of comparators, cohorts, or summary data reflecting differential selections, compensation and/or qualifications; testimony about individuals denied or given misleading or contradictory information about employment or compensation practices; testimony about the extent of discretion or subjectivity involved in making employment decisions; or other anecdotal or supporting evidence.

* * * * *

Statistical evidence means hypothesis testing, controlling for the major, measureable parameters and variables used by employers (including, as appropriate, other demographic variables, test scores, geographic variables, performance evaluations, years of experience, quality of experience, years of service, quality and reputation of previous employers, years of education, years of training, quality and reputation of credentialing institutions, *etc.*), related to the probability of outcomes occurring by chance and/or analyses reflecting statements concluding that a difference in employment selection rates or compensation decisions is statistically significant by reference to any one of these statements:

(1) The disparity is two or more times larger than its standard error (*i.e.,* a standard deviation of two or more);

(2) The Z statistic has a value greater than two; or

(3) The probability value is less than 0.05.

* * * * *

■ 4. Revise section 60–1.33 to read as follows:

§ 60–1.33 Resolution Procedures.

(a) *Predetermination Notice.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination, OFCCP will only issue a predetermination notice after first considering these factors: Whether the unexplained disparity is both practically and statistically significant (as described in this part's definition of ''Statistical evidence'') and, where relevant, whether nonstatistical evidence demonstrates an intent to discriminate. If OFCCP cannot corroborate statistical evidence with nonstatistical evidence, OFCCP will issue a predetermination notice only when the statistical evidence is significant at a confidence level of 99% or higher, which equates to three or more standard deviations or a p value of 0.01 or less. A contractor must respond to a predetermination notice within 15 calendar days of receipt of the notice, which OFCCP may extend for good cause.

(b) *Notice of Violation.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination or other material violations of the equal opportunity clause, OFCCP may issue a notice of violation to provide notice to the contractor requiring corrective action and inviting conciliation through a written agreement. For discrimination violations, OFCCP may issue the notice of violation following issuance of a predetermination notice if the contractor does not respond or provide a sufficient response within 15 calendar days of receipt of the notice, unless OFCCP has extended the predetermination notice response time for good cause shown.

(c) *Conciliation Agreement.* If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and

(1) If the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(d) *Expedited Conciliation Option.* A contractor may waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

■ 5. The authority citation for part 60–2 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501, and E.O. 13672, 79 FR 42971.

§ 60–2.1 [Amended]

■ 6. Amend § 60–2.1 by removing the words ''Deputy Assistant Secretary'' and adding in their place ''Director''.

§ 60–2.2 [Amended]

■ 7. Amend § 60–2.2 by removing the words ''Deputy Assistant Secretary'' and adding in their place ''Director''.

§ 60–2.31 [Amended]

■ 8. Amend § 60–2.31 by removing the words ''Deputy Assistant Secretary'' and adding in their place ''Director.''

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

■ 9. The authority citation for part 60–300 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 10. Amend section 60–300.2 by adding definitions for ''Nonstatistical evidence'' and ''Statistical evidence'' in alphabetical order to read as follows:

§ 60–300.2 Definitions.

* * * * *

Nonstatistical evidence may include testimony about biased statements, remarks, attitudes, or acts based upon membership in a protected class; differential treatment through review of comparators, cohorts, or summary data reflecting differential selections, compensation and/or qualifications; testimony about individuals denied or given misleading or contradictory information about employment or compensation practices; testimony about the extent of discretion or subjectivity involved in making employment decisions; or other anecdotal or supporting evidence.

* * * * *

Statistical evidence means hypothesis testing, controlling for the major, measureable parameters and variables used by employers (including, as appropriate, other demographic variables, test scores, geographic variables, performance evaluations, years of experience, quality of experience, years of service, quality and reputation of previous employers, years of education, years of training, quality and reputation of credentialing institutions, *etc.*), related to the probability of outcomes occurring by chance and/or analyses reflecting statements concluding that a difference in employment selection rates or compensation decisions is statistically significant by reference to any one of these statements:

(1) The disparity is two or more times larger than its standard error (*i.e.,* a standard deviation of two or more);

(2) The Z statistic has a value greater than two; or

(3) The probability value is less than 0.05.

* * * * *

■ 11. Revise section 60–300.62 to read as follows:

§ 60–300.62 Resolution Procedures.

(a) *Predetermination Notice.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination, OFCCP will only issue a predetermination notice after first considering these factors: Whether the unexplained disparity is both practically and statistically significant (as described in this part's definition of ''Statistical evidence'') and, where relevant, whether nonstatistical evidence demonstrates an intent to discriminate. If OFCCP cannot corroborate statistical evidence with nonstatistical evidence, OFCCP will issue a predetermination notice only when the statistical evidence is significant at a confidence level of 99% or higher, which equates to three or more standard deviations or a p value of 0.01 or less. A contractor must respond to a predetermination notice within 15 calendar days of receipt of the notice, which OFCCP may extend for good cause.

(b) *Notice of Violation.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination or other material violations of the equal opportunity clause, OFCCP may issue a notice of violation to provide notice to the contractor requiring corrective action and inviting conciliation through a written agreement. For discrimination violations, OFCCP may issue the notice of violation following issuance of a predetermination notice if the contractor does not respond or provide a sufficient response within 15 calendar days of receipt of the notice, unless OFCCP has extended the predetermination notice response time for good cause shown.

(c) *Conciliation Agreement.* If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and

(1) If the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(d) *Expedited Conciliation Option.* A contractor may waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement.

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

■ 12. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

■ 13. Amend section 60–741.2 by adding definitions for ''Nonstatistical evidence'' and ''Statistical evidence'' in alphabetical order to read as follows:

§ 60–741.2 Definitions.

* * * * *

Nonstatistical evidence may include testimony about biased statements, remarks, attitudes, or acts based upon membership in a protected class; differential treatment through review of comparators, cohorts, or summary data reflecting differential selections, compensation and/or qualifications; testimony about individuals denied or given misleading or contradictory information about employment or compensation practices; testimony about the extent of discretion or subjectivity involved in making employment decisions; or other anecdotal or supporting evidence.

* * * * *

Statistical evidence means hypothesis testing, controlling for the major, measureable parameters and variables used by employers (including, as appropriate, other demographic variables, test scores, geographic variables, performance evaluations, years of experience, quality of experience, years of service, quality and reputation of previous employers, years of education, years of training, quality and reputation of credentialing institutions, *etc.*), related to the probability of outcomes occurring by chance and/or analyses reflecting statements concluding that a difference in employment selection rates or compensation decisions is statistically significant by reference to any one of these statements:

(1) The disparity is two or more times larger than its standard error (*i.e.,* a standard deviation of two or more);

(2) The Z statistic has a value greater than two; or

(3) The probability value is less than 0.05.

* * * * *

■ 14. Revise section 60–741.62 to read as follows:

§ 60–741.62 Resolution Procedures.

(a) *Predetermination Notice.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination, OFCCP will only issue a predetermination notice after first considering these factors: Whether the unexplained disparity is both practically and statistically significant (as described in this part's definition of ''Statistical evidence'') and, where relevant, whether nonstatistical evidence demonstrates an intent to discriminate. If OFCCP cannot corroborate statistical evidence with nonstatistical evidence, OFCCP will issue a predetermination notice only when the statistical evidence is

significant at a confidence level of 99% or higher, which equates to three or more standard deviations or a p value of 0.01 or less. A contractor must respond to a predetermination notice within 15 calendar days of receipt of the notice, which OFCCP may extend for good cause.

(b) *Notice of Violation.* If a compliance review or other review by OFCCP indicates preliminary findings of discrimination or other material violations of the equal opportunity clause, OFCCP may issue a notice of violation to provide notice to the contractor requiring corrective action and inviting conciliation through a written agreement. For discrimination violations, OFCCP may issue the notice of violation following issuance of a predetermination notice if the contractor does not respond or provide a sufficient response within 15 calendar days of receipt of the notice, unless OFCCP has extended the predetermination notice response time for good cause shown.

(c) *Conciliation Agreement.* If a compliance review, complaint investigation or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and

(1) If the contractor, subcontractor or bidder is willing to correct the violations and/or deficiencies, and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted, including, where appropriate (but not necessarily limited to), remedies such as back pay and retroactive seniority.

(d) *Remedial benchmarks.* The remedial action referenced in paragraph (c) of this section may include the establishment of benchmarks for the contractor's outreach, recruitment, hiring, or other employment activities. The purpose of such benchmarks is to create a quantifiable method by which the contractor's progress in correcting identified violations and/or deficiencies can be measured.

(e) *Expedited Conciliation Option.* A contractor may waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement.

[FR Doc. 2019–27258 Filed 12–27–19; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 430, 433, 447, 455, and 457

[CMS–2393–N]

RIN 0938–AT50

Medicaid Program; Medicaid Fiscal Accountability Regulation; Supplement and Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; supplement and extension of comment period.

SUMMARY: This document extends the comment period for the proposed rule entitled ''Medicaid Program; Medicaid Fiscal Accountability Regulation'' that appeared in the November 18, 2019 **Federal Register**. The comment period for the proposed rule, which would end on January 17, 2020, is extended 15 days to February 1, 2020. We additionally note that based on public comments received on this proposed rule, we will adjust the effective dates of our policies to allow for adequate implementation timelines, as appropriate.

DATES: The comment period for the proposed rule published November 18, 2019 (84 FR 63722), is extended to 5 p.m., eastern daylight time, on February 1, 2020.

ADDRESSES: You may submit comments as outlined in the November 18, 2019 proposed rule (84 FR 63722). Please choose only one method listed.

FOR FURTHER INFORMATION CONTACT:

Andrew Badaracco, (410) 786–4589, Richard Kimball, (410) 786–2278, and Daniil Yablochnikov, (410) 786–8912, for Medicaid Provider Payments, Supplemental Payments, Upper Payment Limits, Provider Categories, Intergovernmental Transfers, and Certified Public Expenditures.

Timothy Davidson, (410) 786–1167, Jonathan Endelman, (410) 786–4738, and Stuart Goldstein, (410) 786–0694, for Health Care-Related Taxes, Provider-Related Donations, and Disallowances.

Lia Adams, (410) 786–8258, Charlie Arnold, (404) 562–7425, Richard Cuno, (410) 786–1111, and Charles Hines, (410) 786–0252, for Medicaid Disproportionate Share Hospital Payments and Overpayments.

Jennifer Clark, (410) 786–2013 and Deborah McClure, (410) 786–3128, for Children's Health Insurance Program (CHIP).

SUPPLEMENTARY INFORMATION: In the ''Medicaid Program; Medicaid Fiscal Accountability Regulation'' proposed rule that appeared in the November 18, 2019 **Federal Register** (84 FR 63722), we solicited public comments on proposed policies that aim to promote transparency by establishing new reporting requirements for states to provide CMS with certain information on supplemental payments to Medicaid providers, including supplemental payments approved under either Medicaid state plan or demonstration authority, and on applicable upper payment limits. Additionally, the proposed rule would establish requirements to ensure that state plan amendments proposing new supplemental payments are consistent with the proper and efficient operation of the state plan and with efficiency, economy, and quality of care. This proposed rule addresses the financing of supplemental and base Medicaid payments through the non-federal share, including states' uses of health care-related taxes and bona fide provider-related donations, as well as the requirements necessary to properly implement the non-federal share of any Medicaid payment.

Since the issuance of the proposed rule, we have received inquiries from a variety of stakeholders, including healthcare provider organizations and industry representatives requesting an extension to the comment period. We also recognize that the comment period for the proposed rule crosses over several federal holidays, which may hinder the ability of the public to provide meaningful comment on the proposed rule. In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe that it is important to allow additional time for the public to prepare comments on the proposed rule. In addition, we believe that granting an extension to the public comment period in this instance would further our overall objective to obtain public input on the proposed provisions to promote transparency and oversight on payments made in the Medicaid program. Therefore, we are extending the comment period for the proposed rule for an additional 15 days.

While we believe it is in the best interest of the public and our proposed policies to extend the comment period for this proposed rule, we also acknowledge that stakeholders require appropriate implementation timelines that could be impacted by this extension. Therefore, we note that we will take this comment period extension into account in determining the effective date(s) of the policies in any

final rule, to allow for adequate implementation timelines as appropriate.

Dated: December 19, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–28179 Filed 12–26–19; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–59, WC Docket No. 17–97; DA 19–1312; FRS 16377]

Advanced Methods To Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Consumer and Governmental Affairs Bureau (Bureau), in consultation with the Wireline Competition Bureau (WCB) and Public Safety and Homeland Security Bureau (PSHSB), solicits input for the first staff report on call blocking, as directed by the Federal Communications Commission (FCC or Commission). The Bureau seeks data and other information on the availability and effectiveness of call-blocking tools offered to consumers, the impact of FCC actions on illegal calls, the impact of call blocking on 911 services and public safety, and any other information that may inform the Commission's analysis of the state of deployment of advanced methods and tools to eliminate illegal and unwanted calls.

DATES: Comments are due on or before January 29, 2020, and reply comments are due on or before February 28, 2020.

ADDRESSES: You may submit comments, identified by CG Docket No. 17–59 and WC Docket No. 17–97, by any of the following methods:

▪ *FCC's website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

▪ *Paper Mail:* Parties who choose to file by paper must file an original and one copy of each filing. Filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Karen Schroeder, Consumer Policy Division, CGB, at (202) 418–0654, email: *Karen.Schroeder@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice,* in CG Docket No. 17–59, WC Docket No. 17–97; document DA 19–1312, released on December 20, 2019. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making oral *ex parte* presentations are reminded that memorandum summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Synopsis

1. In June 2019, the FCC took action to further protect consumers from illegal and unwanted robocalls. The Commission also directed the Bureau, in consultation with WCB and PSHSB, to report on the implementation and effectiveness of blocking measures. The Commission specified that the Bureau address, among other things, the availability to consumers of call-blocking solutions, the effectiveness of various categories of call-blocking tools, and the impact of previous Commission rule changes to allow voice service providers to block calls from phone numbers on a Do-Not-Originate list and those that purport to be from invalid, unallocated, or unused numbers. The Commission also asked that the Bureau study information on the impact of call blocking on 911 and public safety.

2. In the *Public Notice,* the Bureau solicits input for the first staff report on call blocking.

3. *Availability of Call-Blocking Tools.* The Bureau seeks data and other information on the availability of call-blocking tools offered to consumers. What tools are available to consumers? Do voice service providers or others offer multiple versions of their tool from which consumers may choose? Are such tools offered on an opt-in basis or opt-out basis? Do the tools block calls at the network level, the device level, or elsewhere in the call path? Are such tools offered by a third party directly to the consumer or by the service provider? What fees, if any, do providers or third parties charge for these tools? What proportion of consumers subscribe to a provider that offers and/or enables call-blocking tools? How many subscribers avail themselves of the tools? Are new tools under development?

4. *Effectiveness of Call-Blocking Tools.* The Bureau seeks data and other information on the effectiveness of call-blocking tools offered to consumers. What are the most appropriate metrics to measure the effectiveness of call-blocking tools, *e.g.,* by fraction of illegal calls blocked? How effective are available tools at blocking illegal and unwanted calls? What tools, if any, send an intercept message for blocked calls? How do blocking tools define false positives? What is the rate of false positives? How do the tools remedy false positives? What is the rate of false negatives (illegal or unwanted calls that reach consumers)? What is the number of illegal robocalls transiting the nation's phone system? How is that number determined?

5. *Impact of FCC Actions.* How have voice service providers responded to the Commission's actions to empower them to protect their customers from illegal calls, such as by blocking calls from phone numbers on a Do-Not-Originate list and those that purport to be from invalid, unallocated, or unused numbers? What initiatives have voice service providers implemented as a result of these and other actions by the Commission? Do voice service providers block Do-Not-Originate calls? Have consumers seen a corresponding reduction in scam calls from numbers on the Do-Not-Originate list, such as Internal Revenue Service and Social Security Administration numbers that unauthorized callers have fraudulently spoofed? Have voice service providers implemented the blocking of calls that purport to be from invalid, unallocated, or unused numbers? Do voice service providers offer opt-out call-blocking programs? If so, how many consumers have opted out? Do voice service providers offer opt-in white-list

blocking? If so, how many consumers have requested such blocking?

6. *Impact on 911 Services and Public Safety.* The Bureau seeks data and other information on the impact of call blocking on 911 services and public safety. Are legitimate calls to or from emergency numbers, either 911 or public safety ''administrative numbers,'' ever blocked? Emergency call centers generally employ protocols by which they will call back a number when a 911 call is dropped or otherwise terminated without a resolution. Do voice service providers or others employ call-blocking tools that may purposefully or inadvertently block a call back from a public safety answering point? Is there a means to ensure call backs from public safety numbers are completed? How are blocked calls reported and resolved? Do public safety entities experience unwanted or illegal calls that interfere with their mission? Have voice service providers or others blocked unwanted calls at the request of state or local law enforcement? What processes, manual or automatic, do voice service providers or others use to facilitate blocking harassing calls to 911 or public safety administrative numbers? Do voice service providers or others perceive any legal impediments in the Commission's rules or otherwise to blocking such calls?

7. *Other Relevant Information.* Finally, the Bureau seeks comment on any other information that may inform the Commission's analysis of the state of deployment of advanced methods and tools to eliminate illegal and unwanted calls.

8. *Confidential Treatment.* Commenters seeking confidential treatment for all or part of their submissions should request such treatment. Where information could be competitively sensitive or could interfere with efforts to enforce compliance with the requirements of the Communications Act or the Commission's rules (*e.g.,* by allowing unlawful callers to circumvent filtering mechanisms), providers and industry groups may aggregate information without attributing practices or data to individual entities. Commenters may provide links to publicly available data or include Excel spreadsheets when they file their comments. The Bureau requests both data for 2019 and projected data through June 2020, if available.

Federal Communications Commission.

Eliot Greenwald,

Deputy Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–28136 Filed 12–27–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 84, No. 249

Monday, December 30, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2018–0048]

Updated Labeling Guideline on Statements That Bioengineered or Genetically Modified Ingredients or Animal Feed Were Not Used in the Production of Meat, Poultry, or Egg Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and response to comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of an updated version of its guideline on how establishments can make label claims concerning the fact that bioengineered or genetically-modified (GM) ingredients or animal feed were not used in the production of meat, poultry, or egg products. For purposes of this guidance document, these claims are referred to as ''negative claims.'' The updated document reflects changes made in response to comments received after announcement of the guideline in an August 2016 **Federal Register** notice.

ADDRESSES: A downloadable version of the compliance guideline is available to view and print at *http://www.fsis.usda.gov/Regulations_&_Policies/Compliance_Guides_Index/index.asp.* No hard copies of the compliance guideline have been published.

FOR FURTHER INFORMATION CONTACT: Terri Nintemann, Assistant Administrator, Office of Policy and Program Development by telephone at (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

Under the Federal Meat Inspection Act, Poultry Products Inspection Act, and Egg Products Inspection Act (21 U.S.C. 601 *et seq.;* 21 U.S.C. 451 *et seq.;* 21 U.S.C. 1031 *et seq.*) (the Acts), FSIS develops and implements regulations and policies to ensure that the labels of meat, poultry, and egg products are truthful and not misleading. Under the Acts, the Secretary of Agriculture, who has delegated this authority to FSIS, must approve the labels of meat, poultry, and egg products before the products can enter commerce (21 U.S.C. 601(d); 21 U.S.C. 457(c); 21 U.S.C. 1036(b)).

FSIS has a prior-approval program for labeling.[1] FSIS allows certain labels that bear only mandatory labeling features and that comply with the Agency's labeling regulations to be generically approved (9 CFR 412.2(a)(1)). However, a label with a special statement or claim,[2] including a negative claim, must be submitted to FSIS for approval before it may be used on a product distributed in commerce (9 CFR 412.1(c)(3) and 412.1(e)). A label bearing a negative claim must be submitted to the Office of Policy and Program Development, Labeling and Program Delivery Staff, in FSIS, with necessary documentation to support the special statement or claim. Examples of negative claims include but are not limited to: ''Product contains no genetically-modified ingredients,'' and ''Product made from poultry that were not fed genetically-engineered feed.''

On August 24, 2016, FSIS announced the availability of and requested comments on its *Labeling Guideline on Statements That Bioengineered or Genetically-Modified Ingredients or Animal Feed Were Not Used in Meat, Poultry, or Egg Products* (81 FR 57879). FSIS developed the guideline for establishments that want to make label claims concerning the fact that bioengineered or GM ingredients were not used in a meat, poultry, or egg product. The guideline also provides information on how establishments can make label claims that a product was produced from livestock or poultry that were not fed bioengineered or GM feed. As stated in the summary, for purposes of this guidance document and hereinafter, these claims are referred to as ''negative claims.''

After reviewing the comments received, the Agency has revised the guideline to clarify that FSIS approves negative claims verified under a third-party certifying organization the same way it approves other special statements or claims and will not limit claims to those consistent with AMS's definition of bioengineering, in Pub. L. 114–216. FSIS also added information about the certification and labeling for certified organic products. Specifically, certified organic products may be labeled with negative claims without additional third-party certification or documentation when the negative claim is connected with an asterisk or other symbol to the explanatory statement ''Produced in compliance with the USDA Organic Regulations'' and that the website of the certifying entity does not always need to appear on the label. The revised guideline is posted at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index.* Although comments will no longer be accepted through *www.regulations.gov* on this guideline, FSIS will update this document as necessary if new information becomes available.

Comments and FSIS Responses

FSIS received 201 comments on the *Labeling Guideline on Statements That Bioengineered or Genetically-Modified Ingredients or Animal Feed Were Not Used in Meat, Poultry, or Egg Products.* Most comments were submitted by individuals who strongly supported food labeling for genetically engineered foods. In addition, FSIS received 12 comments from consumer-advocacy organizations, agriculture-specific trade coalitions/associations, organic farmers, and a trade association representing the poultry industry.

Many of the issues raised in the more detailed comments concerned how the statutory definition of ''bioengineering'' in Pub. L. 114–216[3] should be interpreted and applied by USDA's Agricultural Marketing Service (AMS). FSIS believes these comments are beyond the scope of the guideline.

[1] See FSIS Directive 7221.1 at *https://www.fsis.usda.gov/wps/wcm/connect/9a2ebc76-2d43-4658-841a-f810b1f65f04/7221.1.pdf?MOD=AJPERES.*

[2] Special statements and claims are claims, logos, trademarks, and other symbols on labels that are generally not defined in FSIS regulations or the *Food Standards and Labeling Policy Book.* For specific examples, see Appendix 1 at *https://www.fsis.usda.gov/wps/wcm/connect/bf170761-33e3-4a2d-8f86-940c2698e2c5/Label-Approval-Guide.pdf?MOD=AJPERES.*

[3] Available at *https://www.congress.gov/bill/114th-congress/senate-bill/764.*

However, the same issues were raised in responses to questions posted in 2017 by AMS as part of the development of the proposed National Bioengineered Food Disclosure Standard (NBFDS). On December 21, 2018, AMS addressed these and other issues in the NBFDS final rule (83 FR 19860).[4]

Following is a summary of the relevant issues raised in the comments and FSIS's responses.

Applicability

Comment: Comments from consumer-advocacy organizations and agriculture-specific trade coalitions/associations strongly opposed the statement in the 2016 guidance document—''FSIS will utilize the definition of ''bioengineering'' in Public Law 114–216 when evaluating negative claims'' (AMS's definition). The comments said FSIS should not use AMS's definition because it directly conflicts with Section 294(c) of Public Law 114–216, creates consumer confusion, and may complicate international trade. According to the comments, FSIS should instead use the Food and Drug Administration's (FDA's) definition of ''modern biotechnology.'' They said the FDA definition is widely accepted and matches the definition recognized by key trade partners.

Response: It was never FSIS's intention to limit negative claims to those consistent with the definition of ''bioengineering'' in Public Law 114–216. FSIS has been and will continue to approve negative claims verified by a third-party certifying organization with standards based on FDA's definition of ''modern biotechnology'' or with standards based on AMS's definition of ''bioengineering.'' However, in response to these comments, FSIS has updated the guideline by removing the statement in question and to clarify that we approve negative claims consistent with our longstanding practice for other special statements and claims verified by a third-party certifying organization. If the negative claim is truthful and the producing establishment submits documentation demonstrating that the third-party certifying organization's program for the claim is being followed, FSIS will approve the negative claim.

Comment: Several comments contained details about how AMS's definition of ''bioengineering'' differs from FDA's definition of ''modern biotechnology.'' The comments said that because of the differences, the same negative claim may reflect different standards depending on which definition the third-party certifier's program is based. They argued this results in negative claims that are inconsistent and potentially misleading to consumers.

Response: FSIS recognizes that negative claims may reflect different standards depending on the certifying entity's standards for the claim. However, FSIS disagrees that these differences result in claims that are misleading or confusing to consumers.

As noted above, the labeling requirements for meat, poultry, and egg products in the Acts and implementing regulations are aimed at preventing product misbranding. To prevent labeling claims that are false and misleading, any label with a special statement or claim, including a negative claim, must be submitted to FSIS for prior-approval (9 CFR 412.1(c)(3) and 412.1(e)). FSIS comprehensively evaluates label approval applications on a case-by-case basis. Further, FSIS often consults with its Federal partners, *e.g.,* the AMS and FDA, to decide whether the documentation submitted in support of a claim provides the level of detail needed to ensure that the claim is truthful and not misleading.

For FSIS to approve a label with a negative claim related to bioengineering, the producing establishment must submit documentation that supports it is complying with standards established by a third-party certifying organization, the third-party certifier's standards must be publicly available on a website, and the label must disclose a website address where consumers can obtain additional information regarding the claim and the third-party's certification process.[5]

FSIS considers its current procedure of comprehensively evaluating approval requests for labels bearing negative claims on a case-by-case basis as sufficient to provide assurance that these labels are truthful and not misleading. Moreover, under the conditions described in the guideline, the labeling includes the information that consumers need to determine whether the negative claim meets their expectations for the claim.

We note establishments do not have to use any of the negative claims listed in the guideline, and that an establishment's decision to use a particular third-party certifier is a voluntary business decision.

Comment: Comments from consumer-advocacy organizations and agriculture-specific trade coalitions/associations argued FSIS should only allow negative claims on products that do not contain bioengineered ingredients *and* that are derived from livestock or poultry that were not fed bioengineered or GM feed because it reflects consumer expectations for these claims.

Response: FSIS disagrees. The guideline explains that, for FSIS to approve a negative claim on product labeling, the label must also bear a website address where consumers can obtain additional information regarding the claim and the third-party organization's certification process. With this approach, the labeling includes the information consumers need if unaware of the specific standards on which the negative claim is based. Thus, FSIS will continue allowing negative claims on products that do not contain bioengineered ingredients and/or that are derived from livestock or poultry that did not consume bioengineered feed when the producing establishment provides evidence that substantiates the claim. Likewise, FSIS will continue to allow the use of synonymous terms such as ''genetically engineered'' or ''GE.''

Comment: Comments from a trade association representing the poultry industry and consumers urged FSIS to clarify in the guideline that an animal is not considered genetically engineered merely because it consumed genetically engineered feed.

Response: Public Law 114–216 prohibits a food derived from an animal ''to be considered a bioengineered food solely because the animal consumed feed produced from, containing, or consisting of a bioengineered substance'' (7 U.S.C. 1639b(b)(2)(A)). FSIS agrees this means that the animal from which the meat or poultry component was derived would not be considered bioengineered solely on the basis of the animal's feed. However, FSIS believes this information is outside the scope of the guideline, as the guideline provides only for negative claims that pertain to the non-animal ingredients, *e.g.,* ''no GMO ingredients'' or ''made without GE ingredients.''

Minimum Standards

Comment: Comments from consumer-advocacy organizations, agriculture-specific trade coalitions/associations, and individuals said FSIS should set minimum standards in the guideline for negative claims and not allow negative claims on products that do not meet these standards.

Response: FSIS does not regulate biotechnologies and, thus, does not have the expertise to determine whether a particular third-party certifying

[4] Available at *https://www.govinfo.gov/content/pkg/FR-2018-12-21/pdf/2018-27283.pdf.*

[5] Products certified as ''organic'' would not need to disclose a website address on the label, except when the address is required under 7 CFR part 205.

organization's standards should represent a particular negative claim. To ensure negative claims continue to accurately reflect the standards on which they are based, FSIS will continue to evaluate labels bearing these claims on a case-by-case basis and, when needed, consult with Federal agencies with expertise in the matter. FSIS will approve a negative claim if it is truthful and adequately substantiated by the producing establishment.

Organic Certification

Comment: Comments from organic farmers and agriculture-specific trade associations urged FSIS to update the guideline to clarify that the *Organic Certificate* is sufficient support for negative claims, such as ''non-GMO'' and ''not bioengineered.'' The comments also said a website is unnecessary on certified-organic product labels.

Response: FSIS agrees. For food certified under the USDA organic regulations, Public Law 114–216 states, ''the certification shall be considered sufficient to make a claim regarding the absence of bioengineering in the food, such as ''not bioengineered'', ''non-GMO'', or another similar claim.'' Furthermore, certified-organic products would not need to disclose a website address on the label, except when the address is required under 7 CFR part 205. FSIS has updated the guideline by adding this information.

Congressional Review Act

Pursuant to the Congressional Review Act at 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs has determined that this notice is not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication online through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.* FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination, any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at: *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done in Washington, DC.

Carmen M. Rottenberg,

Administrator.

[FR Doc. 2019–27993 Filed 12–27–19; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Architectural and Transportation Barriers Compliance Board; Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 13–15, 2020, at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, January 13, 2020

1:30 p.m.–2:30 p.m. Ad Hoc Committee on Frontier Issues

Tuesday, January 14, 2020

2:30 p.m.–3:00 p.m. Ad Hoc Committee on Design Guidance

3:00 p.m.–4:00 p.m. Updates on Onboard Wheelchair Guidance and Rail Vehicles Rulemaking (Closed)

Wednesday, January 15, 2020

9:30 a.m.–10:00 a.m. Budget Committee

10:00 a.m.–10:30 a.m. Planning and Evaluation

10:30 a.m.–11:00 a.m. Technical Programs

1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street, NW, suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 or *capozzi@access-board.gov.*

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, January 15, the Access Board will consider the following agenda items:

- Approval of Minutes: September 11, 2019; November 6, 2019—(vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues
- Planning and Evaluation Committee
- Technical Programs Committee
- Budget Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, January 15. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line ''Access Board meeting—Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public

comment must be received by Wednesday, January 8. Commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they are pre-registered. Due to time constraints, each commenter is limited to two minutes. The Board will listen respectfully to comments; however, they will not engage in dialogue or answer questions. The purpose of the public comments is to hear the public's views. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings.

Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

You may view the Wednesday, January 15, 2020 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2019–28078 Filed 12–27–19; 8:45 am]

BILLING CODE 8150–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Senior Executive Service Performance Review Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the membership of the Chemical Safety and Hazard Investigation Review Board (CSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: These appointments were effective on December 3, 2019.

ADDRESSES: Send comments concerning this notice to: Maurice Hawthorne, Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Maurice Hawthorne, Human Resources Director, CSB, (202) 261–7600.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, a performance review board (PRB). The PRB reviews initial performance ratings of members of the Senior Executive Service (SES) and makes recommendations on performance ratings and awards for senior executives. Because the CSB is a small independent Federal agency, the SES members of the CSB's PRB are being drawn from other Federal agencies.

The CSB Board Member Delegated Interim Executive and Administrative Authority has appointed the following individuals to serve as members of the CSB Senior Executive Service PRB: David M. Capozzi, Director of Technical and Information Services, United States Access Board; Dolline L. Hatchett, Director, Office of Safety Recommendations and Communications, National Transportation Safety Board; and Jessica S. Bartlett, Regional Director, Federal Labor Relations Authority, Washington Regional Office.

Authority: 5 U.S.C. 4314.

Dated: December 23, 2019.

Raymond Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2019–28114 Filed 12–27–19; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; State and Local Government Finance Collections, and Public Employment and Payroll Collections

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revisions to the State and Local Government Finance Collections and Public Employment and Payroll Collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before February 28, 2020.

ADDRESSES: Direct all written comments to Thomas Smith, PRA Liaison, U.S. Census Bureau, 4600 Silver Hill Road, Room 7K250A, Washington, DC 20233 (or via the internet at *PRAcomments@doc.gov*). You may also submit comments, identified by Docket Number USBC–2019–0018, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kimberly Moore, Chief, Economy-Wide Statistics Division, U.S. Census Bureau, Room 8K154, 4600 Silver Hill Road, Washington, DC 20233; or by email *Kimberly.P.Moore@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection tools necessary to conduct the public finance and the public employment and payroll programs, which consists of the annual collections of information and a quinquennial collection in the census years ending in ''2'' and ''7''. This clearance and all future clearances will combine all Census of Governments programs and their related Annual programs, which were previously submitted separately. During the upcoming three years, we intend to conduct the 2020 and 2021 Annual Surveys of State and Local Government Finances and the 2021 Survey of Public Employment and Payroll and the 2022 Census of Governments—Finance and 2022 Census of Governments—Employment.

The Census of Governments—Finance and Annual Surveys of State and Local Government Finances collect data on state government finances and estimates of local government revenue, expenditure, debt, assets, and pension systems nationally and within state areas. The surveys include the Annual

Survey of State Government Finances, the Annual Survey of Local Government Finances, the Annual Survey of State Tax Collections and the Annual Survey of Public Pensions. The Census of Governments—Employment and Annual Survey of Public Employment and Payroll collects state and local government data on full-time and part-time employment, part-time hours worked, full-time equivalent employment, and payroll statistics by governmental function. Data are collected for all agencies, departments, and institutions of the fifty state governments and for a sample of all local governments (counties, municipalities, townships, and special districts). Data for school districts are collected under a separate survey. In the census year, equivalent data are collected from all local governments. These separate data collections are necessary to create the comprehensive financial and employment picture for state and local governments. The combined data are released as part of the State and Local Government Finance and Public Employment & Payroll statistical series. The collections also produce individual data products that focus on state governments, local governments, public pensions and public employment in greater detail than the combined financial and employment series as a by-product of their collections for the combined data series. The Census Bureau provides these data to the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts and for constructing the functional payrolls in the public sector of the Gross Domestic Product, payroll being the single largest component of current operations, and to the Federal Reserve Board for use in the Flow of Funds Accounts. Other Federal agencies that make use of the data include the Council of Economic Advisers, the Agency for Healthcare Research and Quality, the Government Accountability Office, and the Department of Justice. State and local governments and related organizations, public policy groups, public interest groups, private research organizations, and private sector businesses also use these data.

The program has collected comprehensive and comparable government financial and employment statistics since 1940.

Starting with the 2020 data collection for the Annual Survey of Public Pensions, the Census Bureau proposes modifying the existing questions concerning actuarial funding of public pension plans for state-administered plans, adding these questions to the survey for locally-administered plans and differentiating between administrative costs and investment costs. These updates reflect changes in accounting standards and the needs of data users inside and outside the federal statistical system.

II. Method of Collection

These surveys use multiple modes for data collection including internet collection with a mailed invitation, telephone, and central collection. Other methods used to collect data and maximize response include collecting state and local government data through submitted financial audits, state financial reports, and comprehensive financial reports and via electronic or mailed files and/or records.

The Census Bureau developed central collection agreements with state and large local government officials to collect the data from their dependent agencies and report to the Census Bureau as a central respondent. These arrangements eliminate the need for a mail invitation for approximately 5,500 governmental units, approximately 3,716 state agencies and 158 school systems in a sample year and 36,000 during the year of the Census of Governments. The arrangements reduce burden by greatly reducing the number of respondents who have to complete an on-line form as the data are acquired from a centralized source instead of multiple sources. Currently, the Census Bureau has central collection arrangements to collect local government data with 27 states, four local school district governments and state government data from all 50 states. The Census Bureau continues to expand the conversion of paper submissions into electronic formats by collaborating with state and local governments regarding electronic reporting of central collection data, and encouraging electronic responses from individual governments.

III. Data

OMB Control Number: 0607–0585.

Form Number(s): F–5, F–11, F–12, F–13, F–28, F–29, F–32, E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–8, E–9, E–10.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: For F-forms: 13,440, For E-forms: 16,872/sample year; For F-forms 59,259 For E-forms: 99,402/census year; Total: 30,312/sample year, 158,661/census year.

Estimated Time Per Response: For F-forms: 3.03, For E-forms: .84 hours/sample year; For F-forms 3.00, For E-forms: .82 hours/census year; Total: 3.87 hours/sample year, 3.82 hours/census year.

Estimated Total Annual Burden Hours: For F-forms: 40,755, For E-forms: 14,164 hours/sample year; For F-forms: 177,826 hours, For E-forms: 81,299 hours/census year; Total: 54,919/sample year, 258,585/census year.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 161 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–28015 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Survey of Construction Questionnaire for Building Permit Official.

OMB Control Number: 0607–0125.

Form Number(s): SOC–QBPO.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 1,017.

Average Hours per Response: 15 minutes.

Burden Hours: 254.

Needs and Uses: The U.S. Census Bureau is requesting an extension of the currently approved collection for the Survey of Construction Questionnaire for the Building Permit Official (SOC–QBPO). The information collected on the SOC–QBPO is necessary to carry out the sampling for the Survey of Housing Starts, Sales and Completions (OMB number 0607–0110), also known as the Survey of Construction (SOC). Government agencies and private companies use statistics from the SOC to monitor and evaluate the large and dynamic housing construction industry.

The SOC–QBPO is an electronic questionnaire. Census Bureau field representatives (FRs) either call or visit permit offices to enter their survey responses into a laptop computer using the Computer Assisted Personal Interviewing (CAPI) software formatted for the SOC–QBPO. The FRs use the SOC–QBPO to obtain information on the operating procedures of a permit office. This enables them to locate, classify, list, and sample building permits for residential construction. These permits are used as the basis for the sample selected for SOC. The Census Bureau also uses the information to verify and update the geographic coverage of permit offices. The questions asked during the interview and the size of the sample will not change.

Failure to collect this information would make it difficult, if not impossible, to accurately classify and sample building permits for the SOC. Data for two principal economic indicators are produced from the SOC: New Residential Construction (housing starts and housing completions) and New Residential Sales. Government agencies use these statistics to evaluate economic policy, measure progress towards the national housing goal, make policy decisions, and formulate legislation. For example, the Board of Governors of the Federal Reserve System uses data from this survey to evaluate the effect of interest rates in this interest-rate sensitive area of the economy. The Bureau of Economic Analysis (BEA) uses the data in developing the Gross Domestic Product (GDP). The private sector and other data users from Department of Housing and Urban Development (HUD) and the National Association of Home Builders (NAHB) use the information for estimating the demand for housing, building materials and the many products used in new housing and to schedule production, distribution, and sales efforts. The financial community uses the data to estimate the demand for short-term (construction loans) and long-term (mortgages) borrowing.

Affected Public: State, local or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: The SOC and this collection are authorized under Title 13, United States Code, Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202)395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–28092 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2019]

Foreign-Trade Zone (FTZ) 78—Nashville, Tennessee; Authorization of Production Activity; Lasko Products, LLC; (Small Consumer Appliances—Fans, Heaters, Humidifiers); Franklin, Tennessee

On August 21, 2019, Lasko Products, LLC (Lasko) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 78, in Franklin, Tennessee.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 47240, September 9, 2019). On December 19, 2019, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 19, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28035 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–261–2019]

Foreign-Trade Zone 2—New Orleans, Louisiana; Application for Subzone; Packard Pipe Terminals, LLC. Belle Chasse, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting subzone status for the facility of Packard Pipe Terminals, LLC, located in Belle Chasse, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on December 19, 2019.

The proposed subzone (6 acres) is located at 806 Engineers Road, Belle Chasse (Plaquemines Parish), Louisiana. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 2.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is February 10, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 24, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 19, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28036 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that all companies subject to this administrative review of the antidumping duty (AD) order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the People's Republic of China (China) are part of the China-wide entity because none filed a separate rate application (SRA) or separate rate certification (SRC). The period of review (POR) is November 1, 2017 through October 31, 2018. We invite interested parties to comment on these preliminary results.

DATES: Applicable December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, Commerce published in the **Federal Register** an antidumping duty order on hot-rolled steel from China.[1] On November 30, 2018, Nucor Corporation (Nucor) submitted a request for an administrative review of multiple companies.[2] On February 6, 2019, Commerce published a notice of initiation of an administrative review of the AD order on hot-rolled steel from China covering the period November 1, 2017 to October 31, 2018.[3]

Scope of the Order

The products covered by the order are hot-rolled steel from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[4]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

None of the companies subject to this review filed a SRA or SRC, or made a claim of no shipments. Thus, Commerce preliminarily determines that these companies have not demonstrated their eligibility for separate rate status. As such, Commerce preliminarily determines that the companies subject to review are part of the China-wide entity.

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[5] Accordingly, the non-market economy (NME) entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[6] Because no party requested a review of the China-wide entity, and we have not self-initiated a review of the China-wide entity, the entity is not under review, and the entity's rate is not subject to change. Accordingly, the pre-existing China-wide rate of 90.83 percent will apply to the entity's entries of subject merchandise into the United States during the POR.

In addition, Nucor submitted comments and information in support of its assertion that the data from U.S. Customs and Border Protection (CBP) released by Commerce for respondent selection purposes may be incomplete due to the failure of importers to properly report entries of subject merchandise as ''Type 03'' entries in order to avoid paying antidumping duties.[7] As explained in further detail in the Preliminary Decision Memorandum, Commerce intends to refer the matter of potential misclassification and fraud to CBP.

Public Comment

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments, filed electronically via ACCESS, within 30 days after the date of publication of these preliminary results of review.[8] Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[10]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.[11] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing

[1] *See Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,* 66 FR 59561 (November 29, 2001) (*Order*).

[2] *See* Nucor's Letter, ''Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China: Request for Administrative Review,'' dated November 30, 2018. Because no party is challenging the prior collapsing determination, we continue to collapse Baosteel Group Corporation, Shanghai Baosteel International Economic & Trading Co., Ltd., and Baoshan Iron and Steel Co., Ltd. (collectively, Baosteel). *See Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China: Final No Shipments Determination of Antidumping Duty Administrative Review; 2012–2013;* 79 FR 67415 (November 13, 2014).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 2159 (February 6, 2019).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,'' issued concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[6] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[7] *See* Nucor's Letter, ''Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China: Comments on CBP Data and Respondent Selection,'' dated April 25, 2019.

[8] *See* 19 CFR 351.309(c)(1)(ii).

[9] *See* 19 CFR 351.309(d)(1) and (2).

[10] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* 19 CFR 351.310(c).

is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[13] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide entity rate of 90.83 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 90.83 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213.

Dated: December 19, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–28033 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* 19 CFR 310(d).

[13] *See* 19 CFR 351.212(b)(1).

[14] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 6, 2019, the Court of International Trade (CIT) entered its final judgment in *Sumecht NA, Inc.* v. *United States,* Court No. 17–00244, finding that the United States Department of Commerce (Commerce) erred in setting the effective date of its *Notice of Court Decision Not in Harmony with a Final Determination and Notice of Amendment Final Determination of Investigation Pursuant to Court Decision* (*Timken* Notice) pertaining to the antidumping duty (AD) investigation of certain crystalline silicon photovoltaic cells, whether or not assembled into modules (certain solar cells), from the People's Republic of China (China). Pursuant to the CIT's final judgment, the effective date of Commerce's *Timken* Notice relative to certain entries of subject merchandise exported by Sumec Hardware Tools Co., Ltd.'s (Sumec Hardware) is November 23, 2015, which is the date of publication of the *Timken* Notice in the **Federal Register.** Accordingly, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to liquidate entries of subject merchandise exported by Sumec Hardware and produced by Phono Solar Technology Co., Ltd., and imported by Sumecht NA, doing business as Sumec North America (Sumecht), which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015, which is ten days after the CIT's decision, through November 22, 2015, which is the day before the date of publication of Commerce's *Timken* Notice in the **Federal Register,** at the separate rate of 13.18 percent.

DATES: Applicable December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

Commerce initiated an AD investigation of certain solar cells from China on November 16, 2011.[1] In the investigation, Commerce assigned a separate AD rate of 24.48 percent to Sumec Hardware,[2] and determined a China-wide rate of 249.96 percent for exporters that did not demonstrate eligibility for separate-rate status. Commerce amended the *Final Determination* on December 7, 2012, which it published along with the AD order.

The U.S. domestic producers challenged the *Final Determination* before the CIT, including Sumec Hardware's separate-rate status. The CIT

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 76 FR 70960 (November 16, 2011).

[2] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791 (October 17, 2012); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 7,018 (December 7, 2012).

remanded the *Final Determination,* at Commerce's request, to re-examine the separate rates assigned to four respondents, including Sumec Hardware.[3] On remand, Commerce determined that Sumec Hardware did not meet the criteria for a separate rate and found it to be part of the China-wide entity.[4]

While that litigation was pending before the CIT, in response to World Trade Organization (WTO) dispute settlement findings, and at the direction of the United States Trade Representative, Commerce implemented final determinations under Section 129 of the Uruguay Round Agreements Act (URAA) in several investigations, including the AD investigation of certain solar cells from China.[5] Pursuant to the Section 129 Implementation, Commerce revised Sumec Hardware's cash deposit rate to 13.18 percent for entries made on or after August 2, 2015, the effective date of the Section 129 Implementation. Commerce issued corresponding cash deposit instructions to CBP in October 2015.

On October 5, 2015, the CIT issued a confidential opinion sustaining Commerce's Remand Results in the *Jiangsu Jiasheng* litigation, including Commerce's determination assigning Sumec Hardware the China-wide rate.[6] Commerce published the *Timken* Notice following the final CIT judgment in *Jiangsu Jiasheng III* on November 23, 2015.[7] In the amended final determination, Commerce set the cash deposit rate for Sumec Hardware, now part of the China-wide entity, at 238.95 percent.[8] Commerce set the effective date for the *Timken* Notice as October 15, 2015, which was the tenth day after the CIT's decision.[9]

On December 30, 2015, in accordance with *Jiangsu Jiasheng III* and the associated *Timken* Notice, Commerce issued amended cash deposit instructions to CBP, notifying CBP that Sumec Hardware was no longer eligible for a separate rate. Commerce instructed CBP to collect cash deposits at the China-wide entity rate, 238.95 percent, for shipments of subject merchandise produced by Phono Solar Technology Co., Ltd. and exported by Sumec Hardware that entered, or were withdrawn from warehouse, for consumption on or after ''10/15/2015,'' the tenth day after the Court's October 5, 2015 decision in *Jiangsu Jiasheng III.*

On March 14, 2016, because no party requested a review of the China-wide entity or of Sumec Hardware for the period December 1, 2014 through November 30, 2015, Commerce issued automatic liquidation instructions to CBP. Commerce instructed CBP to liquidate entries during the specified period at the cash deposit in effect on the date of entry. For Sumec Hardware, this rate was 238.95 percent (*i.e.,* the rate that resulted from this Court's decision in *Jiangsu Jiasheng III*).

On September 6, 2019, in a separate challenge—*Sumecht NA, Inc.* v. *United States*—the CIT held that Commerce erred in setting the effective date of the *Timken* Notice, amended cash deposit instructions, and automatic instructions to thirty-nine days before publication of the *Timken* Notice.[10] The CIT directed Commerce to ''reliquidate'' Sumec Hardware's entries in a manner consistent with its opinion.[11]

Implementation of Court Decision

Consistent with the CIT's final judgment in *Sumecht,* Commerce intends to instruct CBP to liquidate shipments of crystalline silicon photovoltaic cells, whether or not assembled into modules, from the China produced by Phono Solar Technology Co., Ltd., exported by Sumec Hardware Tools Co., Ltd., and imported by Sumecht NA, doing business as Sumec North America, which were entered, or withdrawn from warehouse, for consumption on or after October 15, 2015 through November 22, 2015, at the separate rate implemented with respect to the AD investigation, as revised by the Section 129 Implementation, *i.e.,* 13.18 percent.

Dated: December 17, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–28032 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

[3] *Jiangsu Jiasheng Photovoltaic Tech. Co.* v. *United States,* 28 F. Supp. 3d 1317, 1338–43 (Ct. Int'l Trade 2014) (*Jiangsu Jiasheng*).

[4] *See Final Results of Redetermination Pursuant to Court Order, Jiangsu Jiasheng Photovoltaic Technology Co., Ltd.* v. *United States,* Consol. Court No. 13–00012 (April 20, 2015) (Remand Results).

[5] *See Implementation of Determinations Under Section 129 of the URAA,* 80 FR 48812 (August 14, 2015) (Section 129 Implementation).

[6] *Jiangsu Jiasheng Photovoltaic Tech. Co.* v. *United States,* 121 F. Supp. 3d 1263 (Ct. Int'l Trade 2015) (*Jiangsu Jiasheng III*). The CIT issued the public version of its decision on December 22, 2015. *See* the CIT's website, ''Slip Opinions—2015'' (*https://www.cit.uscourts.gov/SlipOpinions/SlipOps-2015.html*).

[7] *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Investigation and Notice of Amended Final Determination of Investigation Pursuant to Court Decision,* 80 FR 72950 (November 23, 2015) (*Timken* Notice).

[8] *Id.; see also* Section 129 Implementation, 80 FR at 48818.

[9] *Id.; see also* section 516A(e) of the Tariff Act of 1930, as amended (the Act).

[10] *Sumecht NA, Inc.* v. *United States,* 399 F. Supp. 3d 1370, 1379 (Ct. Int'l Trade 2019) (*Sumecht*).

[11] *Id.* CBP has not yet liquidated the affected entries. The liquidation of the entries has been enjoined as a result of an injunction that is in place with respect to litigation before the CIT involving a corresponding countervailing duty proceeding. *See Sumec Hardware & Tools Co., Ltd.* v. *United States,* Court No. 18–00186.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 11–1A001]

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review to Latin American Multichannel Advertising Council, Inc. (''LAMAC''), Application No. 11–1A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA''), issued an amended Export Trade Certificate of Review Certificate to LAMAC on December 20, 2019.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

LAMAC's Export Trade Certificate of Review was amended as follows:

1. The following companies were added as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)):

- NBCUniversal Networks International Spanish Latin America, LLC
- MTV Networks Latin America Inc.
- AMC Networks Latin America LLC
- Lifetime Latin America, LLC

2. The following company was deleted as a Member of the Certificate:

- E! Entertainment Television Latin America Partners, L.P.

3. The names of the following Members of the Certificate were changed:

- From NGC Networks Latin America, LLC to NGC Network Latin America, LLC
- From Turner Broadcasting System Latin America, Inc. to Turner International Latin America, Inc.
- From History Channel Latin America, LLC to The History Channel Latin America, LLC
- From Fox Latin American Channel, Inc. to Fox Latin American Channel LLC

LAMAC's Membership under the amended Export Trade Certificate of Review is as follows:

1. Discovery Latin America, LLC
2. Fox Latin American Channel LLC
3. NGC Network Latin America, LLC
4. Turner International Latin America, Inc.
5. A&E Mundo, LLC
6. The History Channel Latin America, LLC
7. NBCUniversal Networks International Spanish Latin America, LLC
8. MTV Networks Latin America Inc.
9. AMC Networks Latin America LLC
10. Lifetime Latin America, LLC

The effective date of the amended certificate is October 3, 2019, the date on which LAMAC's application to amend was deemed submitted.

Dated: December 20, 2019.

Amanda Reynolds,

International Economist, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–28062 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Polyester Staple Fiber From Korea; Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on polyester staple fiber from Korea for the period of review (POR) May 1, 2018 through April 30, 2019, based on the timely withdrawal of the requests for review.

DATES: Applicable December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published a notice of opportunity to request an administrative review of the AD order on polyester staple fiber from Korea for the POR of May 1, 2018, through April 30, 2018.[1] On May 31, 2019, Commerce received timely-filed requests from DAK Americas LLC and Auriga Polymers, Inc. (the petitioners)[2] for administrative reviews of Huvis Corporation (Huvis) and Toray Chemical Korea, Inc. (Toray) and from Huvis[3] for administrative review of itself, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b). Commerce received no other requests for administrative review.

On July 15, 2019, pursuant to these requests and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice initiating an administrative review of the antidumping duty order on polyester staple fiber from Korea.[4] On July 18, 2019, the petitioners withdrew their request for an administrative review of Toray.[5] On August 1, 2019, the petitioners withdrew their request for an administrative reviews of Huvis.[6] On August 2, 2019, Huvis withdrew its request for an administrative review of itself.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners and Huvis withdrew their requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of polyester staple fiber from Korea. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* the petitioners' Letter, ''Polyester Staple Fiber—Review Request,'' dated May 31, 2019.

[3] *See* Huvis's Letter, ''Certain Polyester Staple fiber from Korea; Request for Administrative Review for 2018–2019 Period,'' dated May 31, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[5] *See* the petitioners' Letter, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Toray Chemical Korea,'' dated July 18, 2019.

[6] *See* the petitioners' Letter, ''Polyester Staple Fiber from Korea—Withdrawal of Review Request for Huvis Corporation,'' dated August 1, 2019.

[7] *See* Huvis's Letter, ''Certain Polyester Staple Fiber from Korea; Withdrawal of Request for Administrative Review for 2018–2019 Period,'' dated August 2, 2019.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 20, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28094 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that RMB Fasteners Ltd. and IFI & Morgan Ltd. (collectively, RMB/IFI) and Certified Products International Inc. (CPI) did not have any shipments of subject merchandise during the period of review (POR), and that the 172 remaining companies subject to this administrative review should be treated as part of the China-wide entity because they failed to demonstrate their eligibility for a separate rate. The POR is April 1, 2018 through March 31, 2019.

DATES: Applicable December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7425.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2019, Commerce published the notice of initiation of the administrative review of the antidumping duty order on certain steel threaded rod (STR) from China.[1] On June 21, 2019, CPI reported that it had no shipments during the POR.[2] On July 15, 2019, RMB/IFI [3] submitted a no shipments certification and a separate rate certification.[4]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by this review is STR from China. For a full description of the scope, *see* the Preliminary Decision Memorandum, dated concurrently with and hereby adopted by this notice.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Preliminary Determination of No Shipments

Based on the available record information, Commerce preliminarily determines that these companies had no shipments during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our assessment practice in non-market economy (NME) administrative reviews, Commerce is not rescinding this review for these companies, but intends to complete the review and issue appropriate instructions to Customs and Border Protection (CBP) based on the final results of the review.[7]

Separate Rates

Because no other company under review submitted a separate rate application or certification, Commerce preliminarily determines that these companies have not demonstrated their eligibility for a separate rate.[8] For additional information, *see* the Preliminary Decision Memorandum.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[9] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.,* 206.00 percent) [10] is not subject to change as a result of this review. Aside from the companies discussed above, Commerce considers all other companies for which a review was requested [11] to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Public Comment

In accordance with 19 CFR 351.309(c), case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of the preliminary determination, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 27587 (June 13, 2019).

[2] *See* CPI's Letter, ''No Shipment Letter for Certified Products International Inc.: Tenth Annual Administrative Review of the Antidumping Duty Order on Certain Steel Threaded Rod from the People's Republic of China, A–570–932 (POR: 04/01/18–03/31/19),'' dated June 21, 2019.

[3] During the investigation, Commerce found RMB/IFI to be a single entity, and because there were no changes during the POR to the facts that supported that determination, we continue to find that these companies are a part of a single entity for this administrative review. *See Certain Steel Threaded Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 58931 (October 8, 2008), unchanged in *Certain Steel Threaded Rod from the Peoples Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 8907 (February 27, 2009).

[4] *See* RMB/IFI's Letter, ''Steel Threaded Rod from the People's Republic of China—No Sales Certification and Separate Rate Certification,'' dated July 15, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2018–2019 Antidumping Duty Administrative Review: Certain Steel Threaded Rod from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *Id.*

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011); *see also* the ''Assessment Rates'' section, *infra.*

[8] We note that RMB/IFI submitted a separate rate certification (SRC). However, this filing is moot because we determined that RMB/IFI had no reviewable shipments during the POR.

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[10] *See Certain Steel Threaded Rod from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

[11] *See* Appendix I.

briefs, may be submitted no later than five days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[13] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide rate of 206.00 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except that if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 206.00 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: December 19, 2019.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix I

Companies Not Granted a Separate Rate

1. Aerospace Precision Corp. (Shanghai) Industry Co., Ltd
2. Aihua Holding Group Co. Ltd.
3. Autocraft Industry (Shanghai) Ltd.
4. Autocraft Industry Ltd.
5. Billion Land Ltd.
6. Billion Technology Ltd
7. Billiongold Hardware Co. Ltd
8. BOLT Mfg. Trade Ltd.
9. Brighton Best International (Taiwan) Inc.
10. Brother Holding Group Co. Ltd.
11. C and H International Corporation
12. Catic Fujian Co., Ltd.
13. Cci International Ltd.
14. Century Distribution Systems Inc
15. Changshu City Standard Parts Factory
16. China Friendly Nation Hardware Technology Limited
17. D.M.D. International Co. Ltd.
18. Da Cheng Hardware Products Co., Ltd.
19. Dalian Xingxin Steel Fabrication
20. Dongxiang Accuracy Hardware Co., Ltd.
21. Ec International (Nantong) Co. Ltd.
22. Fastco (Shanghai) Trading Co., Ltd.
23. Fasten International Co., Ltd.
24. Fastenal Canada Ltd.
25. Fastwell Industry Co. Ltd.
26. Fook Shing Bolts & Nuts Co. Ltd.
27. Fuda Xiongzhen Machinery Co., Ltd.
28. Fuller Shanghai Co. Ltd.
29. Gem-Year Industrial Co. Ltd.
30. Guangdong Honjinn Metal & Plastic Co., Ltd.
31. Hainan Zhongyan United Development Co.
32. Haining Hifasters Industrial Co.
33. Haining Shende Imp. & Exp. Co. Ltd.
34. Haining Zhongda Fastener Co., Ltd.
35. Haiyan Ai&Lun Standard Fastener Co.
36. Haiyan Chaoqiang Standard Fastener
37. Haiyan Dayu Fasteners Co., Ltd.
38. Haiyan Evergreen Standard Parts Co. Ltd.
39. Haiyan Fuxin High Strength Fastener
40. Haiyan Hatehui Machinery Hardware
41. Haiyan Hurras Import & Export Co. Ltd.
42. Haiyan Jianhe Hardware Co. Ltd.
43. Haiyan Julong Standard Part Co. Ltd.
44. Haiyan Shangchen Imp. & Exp. Co.
45. Haiyan Yuxing Nuts Co. Ltd.
46. Hangzhou Everbright Imp. & Exp. Co. Lt
47. Hangzhou Grand Imp. & Exp. Co., Ltd.
48. Hangzhou Great Imp. & Exp. Co. Ltd.
49. Hangzhou Lizhan Hardware Co. Ltd.
50. Hangzhou Prostar Enterprises Ltd.
51. Hangzhou Tongwang Machinery Co., Ltd.
52. Hilti (China) Ltd.
53. Hong Kong Sunrise Fasteners Co. Ltd.
54. Hong Kong Yichen Co. Ltd.
55. Honoble Precision (China) Mfg.
56. Intech Industries Shanghai Co., Ltd.
57. Jiangsu Innovo Precision Machinery
58. Jiangsu Jinhuan Fastener Co., Ltd.
59. Jiangsu Zhongweiyu Communication Equipment Co. Ltd.
60. Jiashan Steelfit Trading Co. Ltd.
61. Jiashan Zhongsheng Metal Products Co., Ltd.
62. Jiaxing Allywin Mfg. Co., Ltd.
63. Jiaxing Brother Standard Part Co., Ltd
64. Jiaxing Chinafar Standard
65. Jiaxing Jinhow Import & Export Co., Ltd.
66. Jiaxing Sini Fastener Co., Ltd.
67. Jiaxing Xinyue Standard Part Co. Ltd.
68. Jiaxing Yaoliang Import & Export Co. Ltd.
69. Jinan Banghe Industry & Trade Co., Ltd.
70. Kinfast Hardware (Shenzhen) Ltd.
71. King Socket Screw Company Ltd.
72. L&W Fasteners Company
73. Macropower Industrial Inc.
74. Mai Seng International Trading Co., Ltd.
75. MB Services Company
76. Midas Union Co., Ltd.
77. Nanjing Prosper Import & Export Corporation Ltd.
78. Nantong Runyou Metal Products
79. New Pole Power System Co. Ltd.
80. Ningbiao Bolts & Nuts Manufacturing Co.
81. Ningbo Abc Fasteners Co., Ltd.
82. Ningbo Beilun Milfast Metalworks Co. Ltd.
83. Ningbo Beilun Pingxin Hardware Co., Ltd.
84. Ningbo Dexin Fastener Co. Ltd.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See* 19 CFR 351.212(b)(1).

[14] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

85. Ningbo Dongxin High-Strength Nut Co., Ltd.
86. Ningbo Exact Fasteners Co., Ltd.
87. Ningbo Fastener Factory
88. Ningbo Fengya Imp. and Exp. Co. Ltd.
89. Ningbo Fourway Co., Ltd.
90. Ningbo Haishu Holy Hardware Import and Export Co. Ltd.
91. Ningbo Haishu Wit Import & Export Co. Ltd.
92. Ningbo Haishu Yixie Import & Export Co. Ltd.
93. Ningbo Jinding Fastening Piece Co., Ltd.
94. Ningbo MPF Manufacturing Co. Ltd.
95. Ningbo Panxiang Imp. & Exp. Co. Ltd.
96. Ningbo Qianjiu Instrument Case Factory
97. Ningbo Seduno Imp. Exp. Co., Ltd.
98. Ningbo Yili Import & Export Co., Ltd.
99. Ningbo Yinzhou Dongxiang Accuracy Hardware Co., Ltd.
100. Ningbo Yinzhou Foreign Trade Co., Ltd.
101. Ningbo Yinzhou Woafan Industry & Trade Co., Ltd.
102. Ningbo Zhenghai Yongding Fastener Co., Ltd.
103. Ningbo Zhenhai Beisuda Equipment Co.
104. Ningbo Zhenhai Dingli Fastener Screw Co., Ltd.
105. Ningbo Zhenhai Jinhuan Fasteners
106. Ningbo Zhongjiang High Strength Bolts Co. Ltd.
107. Ningbo Zhongjiang Petroleum Pipes & Machinery Co. Ltd.
108. Orient International Holding Shanghai Rongheng Intl Trading Co. Ltd.
109. Orient Rider Corporation Ltd.
110. Panxiang Imp. & Exp. Co., Ltd.
111. Pol Shin Fastener (Zhejiang) Co.
112. Prosper Business and Industry Co., Ltd.
113. Qingdao Free Trade Zone Health Intl.
114. Qingdao Top Steel Industrial Co. Ltd.
115. Sampulse Industrial Co., Ltd.
116. Shaanxi Succeed Trading Co., Ltd.
117. Shanghai Autocraft Co., Ltd.
118. Shanghai Beitra Fasteners Co., Ltd.
119. Shanghai East Best Foreign Trade Co.
120. Shanghai East Best International Business Development Co., Ltd.
121. Shanghai E-Heng Imp. & Exp. Co. Ltd.
122. Shanghai Fortune International Co. Ltd.
123. Shanghai Furen International Trading
124. Shanghai Hunan Foreign Economic Co., Ltd.
125. Shanghai Jiabao Trade Development Co. Ltd.
126. Shanghai Nanshi Foreign Economic Co.
127. Shanghai Overseas International Trading Co. Ltd.
128. Shanghai Prime Machinery Co. Ltd.
129. Shanghai Printing & Dyeing and Knitting Mill
130. Shanghai Printing & Packaging Machinery Corp
131. Shanghai Recky International Trading Co., Ltd.
132. Shanghai Sinotex United Corp. Ltd.
133. Shanghai Strong Hardware Co. Li
134. Shanghai Wisechain Fasteners Ltd.
135. Shenzhen Fenda Technology Co., Ltd.
136. Shenzhen Haozhenghao Technology Co.
137. Shijiazhuang Huitongxiang Li Trade
138. Soyoung Industrial Co., Ltd.
139. SRC Metal (Shanghai) Co. Ltd.
140. untec Industries Co., Ltd.
141. Suzhou Henry International Trading Co., Ltd.
142. T and C Fastener Co. Ltd.
143. T and L Industry Co. Ltd.
144. Taizhou Maixing Machinery Co.
145. Telsto Development Co., Ltd.
146. The Hoffman Group International
147. Tianjin Port Free Trade Zone Tianjin Star International Trade Co., Ltd.
148. Tong Ming Enterprise Co., Ltd.
149. Tong Win International Co., Ltd.
150. Tri Steel Co., Ltd.
151. Wisechain Trading Limited
152. Wuxi Metec Metal Co. Ltd.
153. Xiamen Hua Min Imp. and Exp. Co. Ltd.
154. Xiamen Rongxinda Industry Co., Ltd.
155. Xiamen Yuhui Import & Export Co., Ltd.
156. Yogendra International
157. Yuyao Hualun Imp. & Exp. Co., Ltd.
158. Zhangjiagang Ever Faith Industry Co.
159. Zhejiang Heirrmu Mechanical and Electrical Equipment Manufacturing Co Ltd.
160. Zhejiang Heiter Industries Co., Ltd,
161. Zhejiang Heiter Mfg & Trade Co. Ltd.
162. Zhejiang Jin Zeen Fasteners Co. Ltd.
163. Zhejiang Junyue Standard Part Co., Ltd.
164. Zhejiang Junyue Standard Parts Co., Ltd.
165. Zhejiang Laibao Precision Technology Co. Ltd.
166. Zhejiang Metals & Minerals Imp & Exp Co. Ltd.
167. Zhejiang Morgan Brother Technology Co. Ltd.
168. Zhejiang New Century Imp & Exp Co. Ltd.
169. Zhejiang New Oriental Fastener Co., Ltd.
170. Zhejiang Zhenglian Industry Development Co., Ltd.
171. Zhongsheng Metal Co., Ltd.
172. Zhoushan Zhengyuan Standard Parts Co., Ltd.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–28034 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Finance Program Requirements.

OMB Control Number: 0648–0012.

Form Number(s): NOAA Form 88–1.

Type of Request: Regular (revision of a currently approved collection).

Number of Respondents: 60 new applications, 251 annual respondents.

Average Hours per Response: 10 hours for new applications, 2 hours for annual responses.

Burden Hours: 1,102.

Needs and Uses: NOAA's Fisheries Finance Program (FFP) is a direct loan program that receives an annual loan authority from Congress to provide long-term loans to the commercial fishing and aquaculture industries. Many of these loans are guaranteed by companies and/or people (guarantors) associated with the loan applicant. These guarantors may not be required to sign the loan application. These new forms (Guarantor Authorization to Obtain Consumer Credit Report and Conduct a Credit Inquiry) grant the FFP, in writing, permission to conduct a credit investigation on the guarantors.

Affected Public: People offering to guarantee a loan made by the FFP.

Frequency: Once, at the time of application.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–28103 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2019–0035]

Agency Information Collection Activities; Proposed Collection; Comment Request; Consumer Product Risk Reduction Valuation Study: Cognitive Interviews & Focus Groups

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC) is announcing an opportunity for public comment on a new proposed collection of information by the agency. Under the Paperwork

Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** for each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed collection to conduct cognitive interviews and focus groups that will assess consumer comprehension of risk associated with consumer products.

DATES: Submit written or electronic comments on the collection of information by February 28, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2019–0035, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail or hand delivery/courier.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2019–0035, into the ''Search'' box, and follow the prompts. A copy of the draft supporting statement titled ''Risk Valuation Study Supporting Statement'' is available at: *https://www.regulations.gov* under Docket No. CPSC–2019–0035, Supporting and Related Material.

FOR FURTHER INFORMATION CONTACT: Bretford Griffin, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *BGriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes cognitive interviews and focus groups. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. Accordingly, CPSC is publishing notice of the proposed collection of information set forth in this document.

A. Consumer Product Risk Reduction Valuation Study

CPSC is authorized under section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that CPSC may conduct research, studies, and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

CPSC issues regulations to reduce the risk of fatal injuries or illnesses associated with the use of consumer products. To value reductions in the risk of fatalities, CPSC and other federal agencies rely on estimates of the value per statistical life (VSL), which are derived from research on individuals' willingness to pay (WTP), consistent with the conceptual framework for benefit-cost analysis. Most of the studies on which these estimates are based calculate WTP by evaluating tradeoffs made by workers in risky occupations, and thus, concentrate on certain populations (working-age males). However, the type of risks and populations that are often addressed by CPSC regulations involve children. Although there are few completed studies that address the value of risk reductions that accrue to children, the available literature is limited and largely unrelated to the types of risks addressed by CPSC rulemakings.[1] Due to the absence of children from labor markets and the lack of observable market data, the majority of the studies employ stated preference methods. That method asks individuals, usually through questionnaires, the economic value that they attach to a perceived risk based on constructed or hypothetical markets. Although the existing studies suggest higher values for reducing risks to children than reductions to adults, they do not adequately determine the extent to which values for fatal risk reductions differ for adults versus children for risks associated with consumer products or adequately explain the level of respondent comprehension of relevant risk concepts.

CPSC seeks to conduct additional research to evaluate whether reductions in consumer product-related risks are valued differently when the beneficiary of the reduction is a child versus an adult. In order to assess comprehension of risk concepts, CPSC intends to conduct qualitative pretesting, in the form of cognitive interviews and focus groups based on best practices used in stated-preference study design. CPSC will conduct an initial set of eight cognitive interviews aimed specifically at topics related to risk communication and risk comprehension from homeowners with at least one child under the age of 12. Based on the results of the initial cognitive interviews, CPSC will inform OMB of any changes that are made for conducting a subsequent set of focus groups. Those focus groups will consist of 40 respondents and 16 additional cognitive interviews that will query the respondents on fatal household risks related to consumer products. The interviews and focus groups are designed to assess respondents' comprehension of risk concepts and to inform the CPSC on the feasibility of developing a future survey instrument that will identify the best methods or approaches to communicate risk concepts related to consumer products.

B. Burden Hours

The estimated annual burden hours are as follows:

[1] *See, e.g.,* Alberini, A. and M. Ščasný. 2011. *Context and the VSL: Evidence from a Stated Preference Study in Italy and Czech Republic.* Environmental and Resource Economics, 49(4): 511–538; Gerking, S., M. Dickie, and M. Veronesi. 2014. *Valuation of Human Health: An Integrated Model of WTP for Mortality and Morbidity Risk Reductions.* Journal of Environmental Economics and Management, 68(1): 20–45; Hammitt, J.K. and K. Haninger. 2010. *Valuing Fatal Risk to Children and Adults: Effects of Disease, Latency and Risk Aversion.* Journal of Risk and Uncertainty, 40: 57–83; Hammitt, J.K. and D. Herrera. 2017. *Peeling Back the Onion: Using Latent Class Analysis to Uncover Heterogeneous Responses to Stated Preference Surveys.* Journal of Environmental Economics and Management, in press.

Activity	Number of responses	Estimated burden per respondent (hours)	Total burden (hours)
Cognitive Interviews I (Risk Communication and Comprehension)	8	1.5	12
Focus Group Sessions (Household Risks and Consumer Products)	40	2	80
Cognitive Interviews II (Household Risks and Consumer Products)	16	1.5	24
Total			116

We estimate the total annual dollar value of this collection to be $4,265. This estimate is based on an average of $36.77/hr. compensation, including benefits, from the National Compensation Survey published by the Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation by ownership,'' Dec. 2018, Table 1, total compensation for civilian workers: *http://www.bls.gov/ncs/*). The total cost to the federal government for the contract to design and conduct the proposed survey is $117,458.

C. Request for Comments

CPSC invites comments on these topics:

- Whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- The accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–28116 Filed 12–27–19; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; CNCS External Reviewer Application; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled CNCS External Reviewer Application for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 29, 2020.

ADDRESSES: Direct written comments and/or suggestions regarding the items contained in this Notice to the Attention: CNCS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of Notice publication.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Hetrick, at 202–606–6856 or by email to *ahetrick@cns.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on August 15, 2019 at 84 FR 41707 Page Number 41707. This comment period ended October 15, 2019. Zero public comments were received from this Notice.

Title of Collection: CNCS External Reviewer Application.

OMB Control Number: 3045–0090.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 250 hours (Average 30 minutes per response).

Abstract: The External Reviewer Application is used by individuals who wish to serve as External Reviewers or External Panel Coordinators for CNCS when external reviewers are needed to review grant applications. The information collected will be used by CNCS to select review participants for each grant competition. The information is collected electronically using CNCS's web-based system. CNCS seeks to renew the current information collection. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on December 31, 2019.

Dated: December 23, 2019.

Amy Borgstrom,

Associate Director of Policy.

[FR Doc. 2019–28148 Filed 12–27–19; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–53]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–53 with attached Policy Justification and Sensitivity of Technology.

Dated: December 19, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLNG CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

NOV 0 7 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 19-53 concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the United Arab Emirates for defense articles and services estimated to cost $830.3 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLNG CODE 5001–06–C

Transmittal No. 19-53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *.	$503.8 million
Other	$326.5 million
TOTAL	$830.3 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Ten (10) CH-47F Chinook Cargo Helicopters

Twenty-six (26) T55-GA-714A Engines (20 installed, 6 spares)

Twenty-four (24) Embedded Global Positioning Systems with Inertial Navigation System (GPS/INS) (20 installed, 4 spares)

Twelve (12) AN/AAR-57 Common Missile Warning Systems (CMWS) (10 installed, 2 spares)

Twenty (20) M134D-H Mini Guns

Twenty (20) M240H Machine Guns

Non-MDE:

Also included are aircraft survivability equipment to include: APR-39A(V)l, AN/ARC-231, Harris RF-7850A-MR, Thales 5400NS, Tetra THR9i, AN/APX-123A, WESCAM MX-l5HDi, ARN-147 VOR/ILS, ARN-153 TACAN, APN-209 Receiver Transmitters, APN-209 Indicator, AN/ARC-220; Infrared Suppression System (IRSS); Fast Rope Insertion/Extraction System (FRIES); Extended Range Fuel System (ERFS); Fire Fighting Equipment; Ballistic Armor Protection System; air worthiness support; spare and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; ground support equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department*: Army (AE-B-ZAP)

(v) *Prior Related Cases, if any*: AE-B-ZAF

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 7, 2019

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—CH-47F Chinook Cargo Helicopters

The Government of the United Arab Emirates has requested to buy ten (10) CH-47F Chinook cargo helicopters; twenty-six (26) T55-GA-714A Engines; twenty-four (24) Embedded Global Positioning Systems with Inertial Navigation System (GPS/INS); twelve (12) AN/AAR-57 Common Missile Warning Systems (CMWS); twenty (20) M134D-H Mini Guns; and twenty (20) M240H Machine Guns. Also included are aircraft survivability equipment to include: APR-39A(V)l, AN/ARC-231, Harris RF-7850A-MR, Thales 5400NS, Tetra THR9i, AN/APX-123A, WESCAM MX-l5HDi, ARN-147 VOR/ILS, ARN-153 TACAN, APN-209 Receiver Transmitters, APN-209 Indicator, AN/ARC-220; Infrared Suppression System (IRSS); Fast Rope Insertion/Extraction System (FRIES); Extended Range Fuel System (ERFS); Fire Fighting Equipment; Ballistic Armor Protection System; air worthiness support; spare and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; ground support equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support. The estimated cost is $830.3 million.

This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of an important partner in the region. This sale is consistent with U.S. initiatives to provide key partners in the region with modem systems that will enhance interoperability with U.S. forces and increase security.

The proposed sale will expand the UAE's helicopter fleet. Further, it will enhance the UAE's operational and defensive capabilities to better defend U.S. and UAE national security interests in the region, and increase the UAE's contributions to any future joint or coalition efforts requiring helicopter support. The UAE will have no difficulty absorbing these defense articles and services into its armed forces.

The proposed sale of these helicopters will not alter the basic military balance in the region.

The principal contractors will be Boeing Helicopters Aircraft Company in Ridley Park, Pennsylvania; Honeywell Engine Company in Phoenix, Arizona; Science and Engineering Services in Huntsville, Alabama. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require an estimated ten (10) U.S. Government and contractor representatives to travel to UAE for up to 60 months for equipment de-processing, fielding, system checkout, training and technical logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 19-53

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The CH-47F Chinook Cargo Helicopter is a medium lift aircraft that includes two T55-GA-714A Engines and an advanced cockpit that features five multi- function displays, a four-axis coupled flight director, digital map, and Dual Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI).

a. Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI) - The EGI is a Selective Availability Anti-Spoofing Module (SAASM) based navigation platform that combines an inertial sensor assembly with a fixed reception pattern antenna GPS receiver. The EGI system is the primary source for position information and is UNCLASSIFIED. The GPS crypto variables needed for the highest GPS accuracy are classified up to SECRET.

b. AN/AAR-57 Common Missile Warning System (CMWS) - The CMWS detects threat missiles in flight, evaluates potential false alarms, declares validity of threat and selects the appropriate Infrared Countermeasure (IRCM). Each platform includes: Electro Optical Missile Sensors, an Electronic Control Unit (ECU), Sequencer, and the Improved Countermeasures Dispenser (ICMD). The hardware is classified CONFIDENTIAL. Releasable technical manuals for operation and maintenance are classified SECRET.

c. AN/APR-39A Radar Warning System - This radar signal detecting set provides warning of a radar directed air defense threat to allow appropriate countermeasures. Hardware is classified CONFIDENTIAL when programmed

with U.S. threat data. Releasable technical manuals for operation and maintenance are classified CONFIDENTIAL. Releasable technical data (technical performance) are classified SECRET. The system can be programmed with threat data provided by the purchasing country.

d. The U.S. Army will provide the RT-1749 exportable version of the AN/ARC-220 radio. This radio is fully digital and made specifically for rotary wing applications allowing crew members to communicate at non line of sight distances.

e. The AN/PYQ-10 (C) Simple Key Loader (SKL) is a ruggedized, portable, hand-held fill device used for securely receiving, storing, and transferring electronic key material and data between compatible end cryptographic units (ECU) and communications equipment. It supports both the DS-101 and DS-102 interfaces, as well as the Crypto Ignition Key and is compatible with existing ECUs.

f. The MX-15 HDi imaging system is a multi-sensor, multi-spectral imaging system with a range of features and benefits to include long range laser illumination. The MX-15 HDi is ideal for medium-altitude covert Intelligence, Surveillance and Reconnaissance (ISR) and Search and Rescue (SAR) missions, and it can be integrated into aerostat, fixed-wing, rotary wing and Unmanned Aerial Vehicle aircraft. The MX-15 HDi system can include up to six imaging and laser sensors, HD Thermal Imager, Color Low-Light Continuous Zoom, Daylight Step-Zoom Spotter, Short Wave Infrared (SWIR) Imager, Laser Rangefinder (LRF), and Laser Illuminator (LI). The MX-15 HDi offers superior high-definition imaging resolution from Electro-Optical (EO) and Infrared (IR) cameras. The system boasts user-friendly technologies that improve operator effectiveness such as a color low-light, wide-angle zoom EO imager, and outstanding range performance during limited visibility due to atmospherics, real-time image enhancement for EO day, EO night and IR. This MX-15 HDi imaging system is a highlyeffective system that utilizes the most recent developments in imaging technology.

2. Software, hardware, and other data/information that is classified or sensitive is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL level.

3. Loss of this hardware, software, documentation and/or data could permit development of information which may lead to a significant threat to future U.S. military operations. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems, which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that UAE can provide substantially the same degree of protection for this technology as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All of the defense articles and services listed in this transmittal have been authorized for release and export to the United Arab Emirates.

[FR Doc. 2019–28048 Filed 12–27–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0136]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Borrower Defense to Loan Repayment Form

AGENCY: Department of Education (ED), Federal Student Aid (FSA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 29, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0136. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Borrower Defense to Loan Repayment Form.

OMB Control Number: 1845–0146.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 96,000.

Total Estimated Number of Annual Burden Hours: 48,000.

Abstract: The Department of Education (the Department) requests approval of this extension without change of the Application for Borrower Defense to Loan Repayment form

(''Universal Borrower Defense Form'') to ensure that all borrowers have a consistent platform to petition for relief, and to facilitate the Department's receipt of clear and complete information necessary to process applications efficiently. This form will facilitate processing claims from student borrowers who believe that they have a Borrower Defense claim regarding their Federal Loans. The form will provide borrowers with an easily accessible and clear method to provide the information necessary for the Department to review and process claim applications efficiently. A successful Borrower Defense claim would provide a full or partial discharge of a borrower's loans, and if appropriate, reimbursement of amounts previously paid.

Dated: December 23, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–28093 Filed 12–27–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0162]

Agency Information Collection Activities; Comment Request; 2016/20 Baccalaureate and Beyond (B&B:16/20) Full-Scale Study

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 28, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0162. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2016/20 Baccalaureate and Beyond (B&B:16/20) Full-Scale Study.

OMB Control Number: 1850–0926.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 34,682.

Total Estimated Number of Annual Burden Hours: 10,435.

Abstract: The National Center for Education Statistics (NCES) conducts the Baccalaureate and Beyond (B&B) studies. The B&B studies of the education, work, financial, and personal experiences of individuals who have completed a bachelor's degree at a given point in time are a series of longitudinal studies. Every 8 years, students are identified as bachelor's degree recipients through the National Postsecondary Student Aid Study (NPSAS). B&B:16/20 is the second follow-up of a panel of baccalaureate degree recipients identified in the 2015–16 NPSAS, and part of the fourth cohort (B&B:16) of the B&B series. NPSA:16 is the base year for B&B:16 follow-up interviews in 2017, 2020, and 2026 (anticipated). B&B cohorts prior to B&B:16 were approved under OMB# 1850–0729. The B&B:16 cohort is submitted and reviewed under OMB# 1850–0926. The primary purposes of the B&B studies are to describe the post-baccalaureate paths of new college graduates, with a focus on their experiences in the labor market and post-baccalaureate education, and their education-related debt. B&B also focuses on the continuing education paths of science, technology, engineering, and mathematics (STEM) graduates, as well as the experiences of those who have begun careers in education of students through the 12th grade. Since graduating from college in 2014–15 for the field test, and 2015–16 for the full-scale study, members of this B&B:16 cohort will begin moving into and out of the workforce, enrolling in additional undergraduate and graduate education, forming families, and repaying undergraduate education-related debt. Documenting these choices and pathways, along with individual, institutional, and employment characteristics that may be related to those choices, provides critical information on the costs and benefits of a bachelor's degree in today's workforce. B&B studies include both traditional-age and non-traditional-age college graduates, whose education options and choices often diverge considerably, and allow study of the paths taken by these different graduates. B&B:16/20 panel maintenance activities were cleared in July 2019 and are currently scheduled to continue through February 2020. This request is for the full-scale study student interview data collection scheduled to take place from July 2020 through March 2021.

Dated: December 23, 2019.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–28134 Filed 12–27–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of the Public Comment Period for the Draft Environmental Assessment for the Commercial Disposal of Defense Waste Processing Facility Recycle Wastewater From the Savannah River Site

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The U.S. Department of Energy (DOE) is extending the public comment period for the request of public comments on the *Draft Environmental Assessment for the Commercial Disposal of Defense Waste Processing Facility Recycle Wastewater from the Savannah River Site* (DOE/EA–2115) (Draft SRS DWPF Recycle Wastewater EA). DOE published a notice in the **Federal Register** on December 10, 2019, establishing a 30-day public comment period ending on January 9, 2020. DOE is extending the public comment period for 32 days, ending on February 10, 2020.

DATES: The comment period for the Notice published on December 10, 2019 (84 FR 67438) is extended. DOE will consider all comments received or postmarked by February 10, 2020.

ADDRESSES: Please direct written comments on the Draft DWPF SRS Recycle Wastewater EA to:

(a) *Email: DWPFEA@em.doe.gov.* Please submit comments in MicrosoftTM Word or PDF file format and avoid the use of encryption.

(b) *Mail:* James Joyce, U.S. Department of Energy, Office of Environmental Management, EM–4.21, 1000 Independence Avenue SW, Washington, DC 20585.

Because your comments will be made public, you are solely responsible for ensuring that your comments do not include any confidential information that you or a third party may not wish to be posted.

FOR FURTHER INFORMATION CONTACT: For information related to Draft SRS DWPF Recycle Wastewater EA, please contact James Joyce, U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585. Email: *DWPFEA@em.doe.gov.* Telephone: (301) 903–2151. For information related to DOE's high-level radioactive waste (HLW) interpretation, please contact Theresa Kliczewski, U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585. Email: *Theresa.Kliczewski@em.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2019, DOE published a notice in the **Federal Register** (84 FR 67438) on the publication of the Draft SRS DWPF Recycle Wastewater EA. The Draft SRS DWPF Recycle Wastewater EA evaluates the potential impacts from a proposed action to retrieve, stabilize, and dispose of up to 10,000 gallons of Defense Waste Processing Facility (DWPF) recycle wastewater from Savannah River Site (SRS) at a commercial low-level radioactive waste disposal facility located outside of South Carolina, licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State under NRC's regulations regarding licensing requirements for land disposal of radioactive waste. If implemented, this proposal would provide alternative treatment and disposal options for up to 10,000 gallons of DWPF recycle wastewater through the use of existing, licensed, off-site commercial facilities.

DOE has determined that an extension of the public comment period on the Draft SRS DWPF Recycle Wastewater EA is appropriate, and is hereby extending the comment period an additional 32 days with the public comment period ending on February 10, 2020.

Signed at Washington, DC, on December 20, 2019.

Mark S. Senderling,

Deputy Assistant Secretary for Waste and Materials Management, Office of Regulatory and Policy Affairs, Office of Environmental Management, U.S. Department of Energy.

[FR Doc. 2019–28224 Filed 12–27–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–20–000]

Notice of Application; Texas-Kansas-Oklahoma LLC

Take notice that on December 6, 2019, Texas-Kansas-Oklahoma LLC. (TKO), 1318 David Lane, Dalhart, TX, 79022 filed in Docket No. CP20–20–000, an application pursuant to section 7(f) of the Natural Gas Act and Part 157 of the Commission's regulations requesting that the Commission grant it a determination of service area within which TKO may, without further Commission authorization, own and operate facilities to provide natural gas distribution service across the state line flowing from southwestern Kansas into in a limited geographic area in northern Oklahoma. The subject distribution facilities, which provide natural gas service to TKO's irrigation customers, originate in Kansas and continue into Oklahoma. TKO also requests a finding that qualifies for treatment as an LDC for purposes of Section 311 of the Natural Gas Policy Act and a waiver of various Commission requirements as appropriate and consistent with the requested determination. All relevant information is more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Mike McEvers, Texas-Kansas-Oklahoma, LLC, P.O. Box 1194, Dalhart, TX 79202; Phone: (806) 244–4210; Email: *tko@tkogas.com,* and copied to C. Edward Watson, II, Foulston Siefkin, LLP, 1551 N Waterfront Pkwy, Suite 100, Wichita, KS 67206; Phone: (316) 291–9589; Email: *cewatson@foulston.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888

First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) (18 CFR 385.214(d)(1)) of the Commission's Rules and Regulations.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: January 7, 2020

Dated: December 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28063 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–635–000]

Rodan Energy Solutions (USA) Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rodan Energy Solutions (USA) Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 9, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28119 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–21–000; CP18–7–000]

Notice of Application; Port Arthur Pipeline LLC

Take notice that on December 9, 2019, Port Arthur Pipeline LLC (Port Arthur) 2925 Briarpark, Suite 900, Houston, Texas 77042, filed in Docket No. CP20–21–000, an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations to request an amendment to the certificate of public convenience and necessity granted by the Commission by order issued on April 18, 2019 in Docket No. CP18–7–000 authorizing Port Arthur Pipeline to construct, own, and operate a new natural gas pipeline system, including a new compressor station, metering and regulating stations, and appurtenant facilities (Louisiana Connector Project).[1]

The Amendment Application proposes to amend Port Arthur

[1] *See Port Arthur LNG, LLC,* 167 FERC 61,052 (2019).

Pipeline's Louisiana Connector Project to relocate the compressor station associated with the pipeline from a location in Allen Parish, Louisiana at pipeline milepost (MP) 96.2 to a location in Beauregard Parish, Louisiana at MP 72.3. Also, the Amendment Application proposes to relocate the site of one previously-approved interconnection with Texas Eastern Transmission and to construct appurtenant facilities and add interconnection facilities with three additional interstate pipeline companies, Cameron Interstate Pipeline, Transcontinental Gas Pipe Line, and LA Storage Pipeline, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Jerrod L. Harrison, 488 8th Avenue, San Diego, CA 92101, (619) 696–2987, *jharrison@sempraglobal.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[2] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[3]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 10, 2020.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28117 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

[2] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[3] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2368–059]

Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments; Algonquin Northern Maine Generating Company

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. Project No.: 2368–059.

c. *Date Filed:* December 3, 2019.

d. *Applicant:* Algonquin Northern Maine Generating Company (Algonquin).

e. *Name of Project:* Scopan Hydroelectric Project.

f. *Location:* The existing project is located on Scopan Stream in the Town of Masardis in Aroostook County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ian MacRobbie, Vice President, Operations, Algonquin Northern Maine Generating Company, 26 Canal Bank, Windsor Locks, Connecticut 06096; Telephone (905) 465–6119.

i. *FERC Contact:* John Baummer, (202) 502–6837 or *john.baummer@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing Scopan Hydroelectric Project consists of: (1) A 750-foot-long dam that includes: (a) A 330-foot-long, 45-foot-high earthen embankment section (north embankment) with a 194-foot-long, 49-foot-high concrete retaining wall at the downstream end of the embankment; (b) a 24-foot-long, 45-foot-high concrete gravity spillway section with a crest elevation of 590 feet National Geodetic Vertical Datum of 1929 (NGVD) and a single 13.5-foot-high spillway gate with two 10-inch-diameter minimum flow butterfly valves; (c) a 26-foot-long, 48-foot-high concrete intake and powerhouse section that includes: (i) Two 12-inch-wide head gates and trashracks with 3-inch clear-bar spacing; and (ii) a 26-foot-long, 49-foot-high concrete powerhouse with a single 1.5-megawatt vertical propeller turbine-generator unit; and (d) a 370-foot-long, 45-foot-high earthen embankment section (south embankment) with a 135.5-foot-long, 45-foot-high concrete retaining wall at the downstream end of the embankment; (2) an approximately 15-mile-long, 5,000-acre impoundment (Scopan Lake) with a useable storage volume of 57,920 acre-feet between elevations 590.5 and 603.2 feet NGVD; (3) three 13.45/2.4-kilovolt transformers and switch gear that connect the generator to Emera, Maine's regional transmission line; and (4) appurtenant facilities.

The project operates in a store and release mode in which the impoundment is drawdown from January through March of each year to meet electricity demand in the winter. During the spring and summer, the impoundment is maintained at or near the full pond levels to protect and enhance fisheries, wetlands, wildlife and recreational resources. Algonquin manages the project to augment flows in the Aroostook River downstream of the project for generation at the Aroostook River Project No. 2367 and the Tinker Falls Project, the latter of which is located in New Brunswick Canada and is not a FERC-licensed project. The Scopan Project had an average annual generation of approximately 878,913 kilowatt-hours from 2012 through 2018.

The project's current license requires Algonquin to: (1) To maintain Scopan Lake water levels as follows: (a) From May 15 to July 31, fluctuate Scopan Lake by no more than one foot; (b) from July 16 to Labor Day, target Scopan Lake between 601.0 to 603.0 feet NGVD; and (c) from October 1 to November 15, maintain Scopan Lake at or above 601.0 feet NGVD; (2) release minimum flows of 21 cubic feet per second (cfs) from December 1 through May 15, and 25 cfs from May 16 through November 30; (3) close one of the two minimum flow valves if Scopan Lake falls below 601.5 feet NGVD; (4) close both minimum flow valves if Scopan Lake falls below 601 feet NGVD; and (5) limit the maximum discharge from the project to not more than 600 cfs from April 1 to November 30.

Algonquin proposes to: (1) Maintain Scopan Lake water surface elevations as follows: (a) From June 1 to July 31 limit water level fluctuations in Scopan Lake to no more than 0.5 vertical foot upward or 1.0 vertical foot downward within any 28-day period from June 1 through July 31;(b) from August 1 through Labor Day, maintain the water elevation of Scopan Lake between 601.0 and 603.0 feet NGVD; (c) from October 1 through November 15, maintain the water elevation of Scopan Lake above 601.0 feet NGVD; (d) limit winter drawdowns of Scopan Lake to no lower than 595.3 feet NGVD from November 16 to May 14; (2) limit the maximum discharge from the project to not more than 600 cfs from June 1 to November 30; and (3) continue to release a continuous minimum flow of 21 cfs including leakage from the minimum flow valves unless water levels in Scopan Lake fall below 601.5 feet NGVD from May 16 through November 30, in which case one valve would be closed.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction the Ashland Community Library, 57 Exchange Street, Ashland, Maine 04732.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Notice of Acceptance/Notice of Ready for Environmental Analysis	April 2020.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	June 2020.
Commission issues Environmental Assessment	September 2020.
Comments on the EA	October 2020.
Modified terms and conditions	December 2020.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28071 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–5–000]

Commission Information Collection Activities (FERC–923); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the requirements and burden of the information collection described below.

DATES: Comments on the collection of information are due February 28, 2020.

ADDRESSES: You may submit comments (identified by Docket No. IC20–5–000) by either of the following methods:

• *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Please identify the specific information collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Type of Request: Three-year extension of the information collection requirements described below with no changes to the current reporting requirements.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FERC–923, Communication of Operational Information between Natural Gas Pipelines and Electric Transmission Operators

OMB Control No.: 1902–0265.

Abstract: In 2013, the Federal Energy Regulatory Commission (FERC or Commission) revised its regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to voluntarily share non-public, operational information with each other for the purpose of promoting reliable service and operational planning on either the pipeline's or public utility's system. This helped ensure the reliability of natural gas pipeline and public utility transmission services by permitting transmission operators to share with each other the information that they deem necessary to promote the reliability and integrity of their systems. FERC removed actual or perceived prohibitions to the information sharing and communications between industry entities. The communications of information are not submitted to FERC. Rather, the non-public information is shared voluntarily between industry entities. FERC does not prescribe the content, medium, format, or frequency for the information sharing and communications. Those decisions are made by the industry entities, depending on their needs and the situation.

Type of Respondent: Natural gas pipelines and public utilities.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for FERC–923 as:

FERC–923

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Public Utility Transmission Operator, communications.	[3] 165	12	1,980	0.5 hrs.; $40	990 hrs.; $79,200 ..	$480
Interstate Natural Gas Pipelines, communications.	[4] 181	12	2,172	0.5 hrs.; $40	1,086 hrs.; $86,880	480
Total	.....	.....	4,152	.....	2,076 hrs.; $166,080.	.....

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28120 Filed 12–27–19; 8:45 am

BILLING CODE 6717–01–P

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] Commission staff estimates that the industry's skill set (wages and benefits) for FERC–923 is comparable to the Commission's skill set. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year (or $80/hour [rounded]).

[3] The estimate for the number of respondents is based on the North American Electric Reliability Corporation (NERC) Compliance Registry as of December 6, 2019, minus the Transmission Operators within ERCOT.

[4] The estimate is based on the number of respondents to the 2018 FERC Forms 2 and 2A (Major and Non-major Natural Gas Pipeline Annual Reports).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–13–000]

Notice of Petition for Partial Waiver; Old Dominion Electric Cooperative

Take notice that on December 20, 2019, pursuant to section 292.402 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations,[1] Old Dominion Electric Cooperative (ODEC), filed a petition for partial waiver on behalf of its electric distribution cooperative member-owners (collectively, the Members),[2] of certain obligations imposed on ODEC and the Members under Sections 292.303(a) and 292.303(b) of the Commission's Regulations [3] implementing section 210 of the Public Utility Regulatory Policies Act of 1978, as amended (PURPA),[4] all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comments: 5:00 p.m. Eastern Time on January 10, 2020.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28118 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 292.402 (2019).

[2] ODEC's 11 Members are A&N Electric Cooperative, BARC Electric Cooperative, Choptank Electric Cooperative, Inc., Community Electric Cooperative, Delaware Electric Cooperative, Inc., Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative.

[3] 18 CFR 292.303(a), 292.303(b) (2019).

[4] 16 U.S.C. 824a–3.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1728–013; ER16–930–007; ER13–1544–010; ER11–2036–013; ER19–1597–002.
Applicants: The Dayton Power and Light Company, AES Ohio Generation, LLC, AES ES Tait, LLC, AES Laurel Mountain, LLC, AES Integrated Energy, LLC.
Description: Triennial Market Power Update for the Northeast Region of AES MBR Affiliates, et al.
Filed Date: 12/20/19.
Accession Number: 20191220–5173.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–405–001.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Tariff Amendment: Amendment ER20–405 Filing to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5285.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: ER20–663–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 filing of CEE tariff revisions to be effective 2/19/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5208.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–664–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–12–20 Nodal Pricing Model Agreement with Pacificorp to be effective 3/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5309.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–665–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–20_Optimal Achievable Output filing to be effective 3/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5312.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–666–000.
Applicants: Gulf Power Company.
Description: § 205(d) Rate Filing: Florida Public Utilities Company NITSA/NOA to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5313.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–667–000.
Applicants: Gulf Power Company.
Description: Tariff Cancellation: Cancellation of SA No. 3 FPU NITSA/NOA to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5315.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–668–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–20_Module D Remove Physical Withholding Exemption filing to be effective 3/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5319.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–669–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–20_Revisions to Enhance Module D filing to be effective 3/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5326.
Comments Due: 5 p.m. ET 1/10/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28124 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–26–000.
Applicants: Krayn Wind LLC, Cambria Wind, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Krayn Wind LLC, et al.
Filed Date: 12/19/19.
Accession Number: 20191219–5337.
Comments Due: 5 p.m. ET 1/9/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2806–004; ER10–2818–004; ER10–2847–004; ER14–963–004.
Applicants: TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing Corporation, TransAlta Centralia Generation, LLC, TransAlta Wyoming Wind LLC.
Description: Triennial Market Power Update Analysis for Northwest Region of the TransAlta Northwest MBR Sellers, et al.
Filed Date: 12/19/19.
Accession Number: 20191219–5280.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–3079–016; ER11–2539–006; ER11–2540–006; ER11–2542–006.
Applicants: Tyr Energy, LLC, Plains End, LLC, Plains End II, LLC, Rathdrum Power, LLC.
Description: Updated Market Power Analysis for Northwest Region of Tyr Energy, LLC, et al.
Filed Date: 12/20/19.
Accession Number: 20191220–5104.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER11–2154–010.
Applicants: Twin Eagle Resource Management, LLC.
Description: Triennial Market Power Update for the Southwest Region of Twin Eagle Resource Management, LLC.
Filed Date: 12/19/19.
Accession Number: 20191219–5274.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER16–355–003; ER16–141–005; ER15–255–004; ER10–2032–008; ER10–2033–008; ER15–190–011; ER12–2313–005; ER10–1330–007; ER18–2465–001; ER18–2466–001; ER19–2343–002; ER17–2336–005.
Applicants: Colonial Eagle Solar, LLC, Conetoe II Solar, LLC, Duke Energy Beckjord Storage, LLC, Duke Energy Kentucky, Inc., Duke Energy Ohio, Inc., Duke Energy Renewable Services, LLC, Laurel Hill Wind Energy, LLC, North Allegheny Wind, LLC, Federal Way Powerhouse LLC, Potter Road Powerhouse LLC, 2018 ESA Project Company, LLC, Shoreham Solar Commons LLC.
Description: Triennial Market Power Update for the Northeast Region of Duke MBR Sellers.
Filed Date: 12/20/19.
Accession Number: 20191220–5165.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER19–2305–000.
Applicants: Valencia Power, LLC.
Description: Supplement to June 28, 2019 Valencia Power, LLC Updated Market Power Analysis for the SW Region.
Filed Date: 12/20/19.
Accession Number: 20191220–5148.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER19–2707–002; ER10–2822–016; ER16–1238–003; ER16–1250–008; ER17–1392–003; ER10–3158–009; ER12–308–009; ER10–3162–009; ER10–3161–009; ER17–1242–002.
Applicants: Poseidon Wind, LLC, Atlantic Renewable Projects II LLC, Avangrid Arizona Renewables, LLC, Avangrid Renewables, LLC, El Cabo Wind LLC, Dillon Wind LLC, Manzana Wind LLC, Mountain View Power Partners III, LLC, Shiloh I Wind Project, LLC, Tule Wind LLC.
Description: Notice of Change in Status of Poseidon Wind, LLC and the Avangrid Southwest MBR Sellers.
Filed Date: 12/19/19.
Accession Number: 20191219–5275.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–647–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–19_MISO–PJM JOA revisions on Constraint Relaxation to be effective 2/18/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5211.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–648–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the MISO–PJM JOA re Constraint Relaxation to be effective 2/18/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5214.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–649–000.
Applicants: AEP Energy Partners, Inc.
Description: § 205(d) Rate Filing: MBR Tariff, FERC Electric Tariff for Market Based Sales to be effective 1/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5216.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–650–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 325, Large Generator Interconnection Agreement with EDF to be effective 12/31/9998.
Filed Date: 12/19/19.
Accession Number: 20191219–5220.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–651–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 326, Long-Term Conditional Firm PTP Agreement with EDF to be effective. 12/21/2019.
Filed Date: 12/19/19.
Accession Number: 20191219–5221.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–652–000.
Applicants: Public Service Company of Oklahoma, Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: Market-Based Rates Tariff to be effective 1/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5231.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–653–000.
Applicants: Great Bay Solar I, LLC.
Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 12/20/2019.
Filed Date: 12/19/19.
Accession Number: 20191219–5232.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–654–000.
Applicants: MidAmerican Central California Transco, LLC.
Description: § 205(d) Rate Filing: Annual TRBAA Update to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5003.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–655–000.
Applicants: New York State Reliability Council, L.L.C.
Description: Informational Filing of the Revised Installed Capacity Requirement for the New York Control Area by the New York State Reliability Council, L.L.C.
Filed Date: 12/19/19.
Accession Number: 20191219–5276.
Comments Due: 5 p.m. ET 1/9/20.

Docket Numbers: ER20–656–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1313R13 Oklahoma Gas and Electric Company NITSA NOA to be effective 12/1/2019.

Filed Date: 12/20/19.

Accession Number: 20191220–5015.

Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–657–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1628R17 Western Farmers Electric Cooperative NITSA NOA to be effective 12/1/2019.

Filed Date: 12/20/19.

Accession Number: 20191220–5019.

Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–658–000.

Applicants: Fortistar North Tonawanda Inc.

Description: Compliance filing: Notice of Succession and New eTariff Baseline Tariff to be effective 12/21/2019.

Filed Date: 12/20/19.

Accession Number: 20191220–5020.

Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–659–000.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO compliance filing re: Fast-Start Resources to be effective 12/31/9998.

Filed Date: 12/20/19.

Accession Number: 20191220–5087.

Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–660–000.

Applicants: Bolt Energy Marketing, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective. 1/1/2020.

Filed Date: 12/20/19.

Accession Number: 20191220–5107.

Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–661–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Concurrences to Navajo Project Agreements to be effective 12/23/2019.

Filed Date: 12/20/19.

Accession Number: 20191220–5164.

Comments Due: 5 p.m. ET 1/10/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28123 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2489–048]

Green Mountain Power Corporation; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process

b. *Project No.:* 2489–048

c. *Date Filed:* October 30, 2019

d. *Submitted By:* Green Mountain Power Corporation (Green Mountain)

e. *Name of Project:* Cavendish Hydroelectric Project

f. *Location:* On the Black River, in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* John Greenan, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; (802) 770–2195; email at *John.Greenan@greenmountainpower.com.*

i. *FERC Contact:* John Baummer at (202) 502–6837; or email at *john.baummer@ferc.gov.*

j. Green Mountain filed its request to use the Traditional Licensing Process on October 30, 2019 and provided public notice of the request on October 23, 2019. In a letter dated December 20, 2019, the Director of the Division of Hydropower Licensing approved Green Mountain's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Green Mountain as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On October 30, 2019, Green Mountain filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2489. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28122 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–342–000.
Applicants: NGO Transmission, Inc.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5027.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–343–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: § 4(d) Rate Filing: ETNG Duke Energy Progress releases beginning 01–01–2020 to be effective 1/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5033.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–344–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Compliance filing Refund Report-Flow Through of Texas Eastern OFO Penalty Sharing to S–2 Customers to be effective N/A.
Filed Date: 12/19/19.
Accession Number: 20191219–5034.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–345–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cleanup Filing—Scheduling of Service to be effective 1/19/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5071.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–346–000.
Applicants: SG Resources Mississippi, L.L.C.
Description: § 4(d) Rate Filing: SG Resources Mississippi, L.L.C.—Filing of Tariff Modifications to be effective 1/20/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5129.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–347–000.
Applicants: Pine Prairie Energy Center, LLC.
Description: § 4(d) Rate Filing: Pine Prairie Energy Center, LLC—Filing of Tariff Modifications to be effective 1/20/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5133.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–348–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Non-Conforming—Patriots Energy Group—PSFT—Removal to be effective 1/19/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5188.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–349–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Negotiated Rates—FTP—Who Dat MC 547—Update to be effective 11/1/2019.
Filed Date: 12/19/19.
Accession Number: 20191219–5198.
Comments Due: 5 p.m. ET 12/31/19.

Docket Numbers: RP20–350–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol. 2—Amendment of Negotiated Rate Agreement—Scout Energy to be effective 1/1/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5206.
Comments Due: 5 p.m. ET 12/31/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28125 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–23–000]

Notice of Request Under Blanket Authorization; Dominion Energy Transmission, Inc

Take notice that on December 10, 2019, Dominion Energy Transmission, Inc (Dominion), 120 Tredegar Street, Richmond, Virginia 23219, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and Dominion's blanket certificate issued in Docket No. CP82–537–000, for authorization to (1) construct approximately 1.7 miles of 20-inch diameter pipeline lateral south of Dominion's existing Gilmore M&R Station in Tuscarawas County, OH (TL–653 OH Lateral); (2) re-wheel the compressors on three existing centrifugal compression sets at Dominion's existing Newark Compressor Station in Licking County, OH; and (3) construct a new M&R site and associated equipment at the end of the new TL–653 OH Lateral in Tuscarawas County, OH (Tri-West Project). The project will allow Dominion to provide 120,000 dekatherms per day of firm natural gas transportation service from Pennsylvania to Ohio for delivery to Tennessee Gas Pipeline Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this prior notice request should be directed to Matthew R. Bley, Director, Gas Transmission Certificates, Dominion Energy Transmission, Inc., 707 East Main Street, Richmond, VA 23219, phone: (866) 319–3382, email: *Matthew.R.Bley@DominionEnergy.com* or Sharon L. Burr, Deputy General Counsel, Dominion Energy Services, Inc., 120 Tredegar Street, Richmond, VA 23219, phone: (804) 819–2171, email: *Sharon.L.Burr@DominionEnergy.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is

filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: December 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28064 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–8–000]

ANR Pipeline Company; Notice of Schedule for Environmental Review of the Grand Chenier Xpress Project

On October 28, 2019, ANR Pipeline Company (ANR), filed an application in Docket No. CP20–8–000 requesting a Certificate of Public Convenience and Necessity pursuant to sections 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities. The proposed project is known as the Grand Chenier XPress Project (Project), and includes facilities in Acadia, Jefferson Davies, and Cameron Parishes, Louisiana. The Project would provide open access firm transportation service of 400 million cubic feet per day of incremental capacity from ANR's Southeast Head station [1] to the Mermentau River GCX Meter Station.

On November 6, 2019, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA: March 27, 2020.

90-day Federal Authorization Decision Deadline: June 25, 2020.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Grand Chenier XPress Project would consist of the following facilities:

- Modifications of ANR's existing Eunice Compressor Station in Acadia Parish, Louisiana, to increase the total certificated horsepower (hp) from 24,000 hp to 39,370 hp, and abandonment of an existing reciprocating compressor in place;
- construction of a new 23,470 hp greenfield compressor station (Mermentau Compressor Station) in Jefferson Davis Parish, Louisiana;
- modifications of the existing Dresser-Rand compressor unit and installation of 42 feet of above ground piping at the Grand Chenier Compressor Station in Cameron Parish, Louisiana; and
- modifications of the Mermentau River GCX Meter Station under ANR's blanket certificate (CP82–480–000), including the installation of an additional meter run and related appurtenant facilities in order to increase the delivery capability from 700 million cubic feet per day to 1.1 billion cubic feet per day.

Background

On December 5, 2019, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Grand Chenier XPress Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–8), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

[1] ANR's Head Station is a pooling point where natural gas is aggregated from many receipt points.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28126 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–35–000]

Commission Information Collection Activities (FERC–515); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–515 (Declaration of Intention) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due January 29, 2020.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0079, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov,* Attention: Federal Energy Regulatory Commission Desk Officer.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–35–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–515 (Declaration of Intention)

OMB Control No.: 1902–0079

Type of Request: Three-year extension of the FERC–515 information collection requirements with no changes to the current reporting requirements.

Abstract: On October 16, 2019, the Commission published a Notice in the **Federal Register** (84 FR 55313) in Docket No. IC19–35–000 requesting public comments. The Commission received no public comments.

The Commission uses the information collected under the requirements of FERC–515 to implement the statutory provisions of section 23(b) of the Federal Power Act (FPA).[1] section 23(b) authorizes the Commission to make a determination as to whether it has jurisdiction over a proposed water project[2] not affecting navigable waters[3] but across, along, over, or in waters over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States. Section 23(b) requires that any person intending to construct project works on such waters must file a declaration of their intention with the Commission. If the Commission finds the proposed project will have an impact on interstate or foreign commerce, then the entity intending to construct the project must obtain a Commission license or exemption before starting construction.[4]

The information is collected in the form of a written application, containing sufficient details to allow the Commission staff to research the jurisdictional aspects of the project. This research includes examining maps and land ownership records to establish whether or not there is Federal jurisdiction over the lands and waters affected by the project. A finding of non-jurisdictional by the Commission eliminates a substantial paperwork burden for the applicant who might otherwise have to file for a license or exemption application. The Commission implements these filing requirements under 18 CFR part 24.

Type of Respondents: Persons intending to construct project works on certain waters described above.

Estimate of Annual Burden.[5] The Commission estimates the annual public reporting burden and cost[6] for the information collection as:

FERC–515: DECLARATION OF INTENTION

Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2) = (3)	Average burden hours & cost ($) per response (4)	Total annual burden hours & total annual cost ($) (3)*(4) = (5)	Cost per respondent ($) (5)÷(1)
6	1	6	80 hrs.; $6,400	480 hrs.; $38,400	$6,400

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

[1] 16 U.S.C. 817.

[2] Dams or project works (16 U.S.C. 817).

[3] See 16 U.S.C. 796 (8) for the definition of Navigable Waters.

[4] Upon a finding of non-jurisdictional by the Commission, and if the project does not utilize surplus water or waterpower from a government dam and no public lands or reservations are affected, permission is granted upon compliance with State laws.

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[6] Commission staff considers resources completing the FERC–515 to be compensated at rates similar to FERC employees. Therefore we are using the 2019 FERC average hourly cost (for wages and benefits for one full-time employee) of $80.00/hour (or $167,091/year).

(2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: December 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28065 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–22–000]

Notice of Request Under Blanket Authorization: Southern Star Central Gas Pipeline, Inc.

Take notice that on December 9, 2019, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP20–22–000 a prior notice request pursuant to sections 157.205, and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82–479–000, to increase the maximum allowable operating pressure on Southern Star's Lines TLB (Hobart Ranch Lateral), TLB–001, TLB–002, TLB–004, and TLB–005 in Hemphill County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Cindy C. Thompson, Manager, Regulatory, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, by telephone at (270) 852–4655, or by email at *cindy.thompson@southernstar.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and two copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 17, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28073 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2311–068]

Great Lakes Hydro America, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Temporary variance of reservoir elevation.

b. *Project No.:* 2311–068.

c. *Date Filed:* November 26, 2019, and supplemented December 3, 2019.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Goreham Hydroelectric Project.

f. *Location:* The project is located on the Androscoggin River in Coös County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Kyle Murphy, 972 Main Street, Berlin, NH 03570, (207) 458–5861.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2311–068.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary variance to operate the reservoir elevation below its normal maximum elevation of 813.3 feet U.S. Geological Survey (USGS) datum, to prevent damage to a power canal embankment. The applicant would maintain a minimum elevation of 808.6 feet USGS datum from June 16 through the last day of February, and maintain a minimum elevation of 809.1 feet USGS datum from March 1 through June 15. The project would return to normal operation by the end of September 2020.

l. *Locations of the Applications:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, MOTION TO INTERVENE, or PROTEST as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 20, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28121 Filed 12–27–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Interconnection of the Proposed Rail Tie Wind Project, Wyoming (DOE/EIS–0543)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and to conduct scoping meetings; notice of floodplain and wetlands involvement.

SUMMARY: ConnectGen Albany County LLC applied to interconnect their proposed Rail Tie Wind Project (Project) with the Western Area Power Administration's (WAPA) existing Ault-Craig 345-kilovolt (kV) transmission line in Albany County, Wyoming. WAPA will prepare an environmental impact statement (EIS) on the proposal to interconnect the Project in accordance with the National Environmental Policy Act of 1969 (NEPA), U.S. Department of Energy (DOE) NEPA Implementing Procedures, and the Council on Environmental Quality (CEQ) regulations for implementing NEPA. Portions of the proposed Project may affect floodplains and wetlands, so this Notice of Intent (NOI) also serves as a notice of proposed floodplain or wetland action in accordance with DOE floodplain and wetland environmental review requirements.

DATES: The public scoping period starts with the publication of this notice and ends on January 29, 2020. To initiate the public involvement process, informational/public scoping meetings will be held in Laramie, Wyoming, near the Project site. Public notice of the date, time, and place of the meetings will be posted on the Project website at *https://www.wapa.gov/transmission/EnvironmentalReviewNEPA/Pages/rail-tie-wind-project.aspx.* All known interested parties, agencies, tribes, and the public will be notified of the meetings directly via the Project mailing list, and via paid advertising, news releases, or other appropriate means. WAPA will consider all comments on the scope of the EIS received or postmarked by the end of the scoping period. The public is invited to submit comments on the proposed Project for WAPA's consideration at any time during the EIS process.

ADDRESSES: Oral or written comments may be provided at the public scoping meetings or mailed or emailed to Mark Wieringa, NEPA Document Manager, Headquarters, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, email *RailTieWind@wapa.gov,* telephone (720) 962–7448.

FOR FURTHER INFORMATION CONTACT: For additional information on the scoping meeting, proposed Project, the EIS process, or to receive a copy of the Draft EIS when it is published, contact Mark Wieringa using the information above. For general information on DOE's NEPA review process, contact Brian Costner, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0119, email *AskNEPA@hq.doe.gov,* telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: WAPA is a Federal power marketing administration within the DOE that markets and delivers Federal wholesale electric power (principally hydroelectric power) to municipalities, rural electric cooperatives, public utilities, irrigation districts, Federal and State agencies, and Native American tribes in 15 western and central States. The proposed Project would be located within WAPA's Rocky Mountain Region, which operates in Arizona, Colorado, most of Wyoming, and portions of Kansas, Nebraska, New Mexico, and Utah. ConnectGen applied to interconnect up to 504 megawatts (MW), via two 252–MW applications, with WAPA's existing Ault-Craig 345-kV transmission line in Albany County,

Wyoming. The Ault-Craig transmission line passes through the proposed Project area, which is located south of Laramie and north of the Colorado state line, on either side of U.S. Highway 287. The proposed Project would be located on private and State lands; no federally-managed land would be affected. There are no designated cooperating agencies at this time, but cooperating agencies could be identified at a later date.

WAPA will prepare an EIS on the interconnection of the proposed Project in accordance with NEPA (42 U.S.C. 4321 *et seq.*); DOE NEPA Implementing Procedures (10 CFR part 1021), and the CEQ regulations for implementing NEPA (40 CFR parts 1500–1508).

Purpose and Need for Agency Action

WAPA needs to consider ConnectGen's interconnection request under its Open Access Transmission Service Tariff (Tariff), which provides for open access to its transmission system through an interconnection if there is available capacity in the transmission system. This EIS will address WAPA's Federal action of interconnecting the proposed Project to WAPA's transmission system, constructing an interconnection switchyard on the existing Ault-Craig transmission line, and making any necessary system modifications to accommodate the interconnection of ConnectGen's proposed Project. Preliminary studies indicate that the power system can accommodate the proposed interconnection without negatively affecting system reliability or power deliveries to existing customers. The transmission system may require network and/or transmission system upgrades as determined in the final studies.

WAPA's Proposed Action

Subject to compliance with the provisions of the Tariff and after consideration of the impacts identified in the Final EIS, WAPA will consider approving ConnectGen's interconnection request and constructing a 345-kV interconnection switchyard on the Ault-Craig transmission line. By taking this action, power generated by the proposed Project would use WAPA's transmission system to reach the market. If WAPA's decision is to approve the interconnection request, WAPA would construct, own, operate, and maintain a 345-kV interconnection switchyard located adjacent to the Ault-Craig transmission line. The interconnection switchyard would consist of a line interconnection, switching equipment and breakers, a control house, communications gear, supervisory control and data acquisition (SCADA) capability, and related equipment. The switchyard would be eight to ten acres in size, surfaced with gravel or crushed rock and enclosed by security fencing.

Alternatives

WAPA will evaluate location options for its interconnection switchyard within the proposed Project area along the existing Ault-Craig transmission line. Under the No Action Alternative, WAPA would not approve the interconnection request or construct the interconnection facility.

Applicant's Proposed Project

ConnectGen's proposed Project would consist of up to 84 to 151 wind turbine generators with a generating capability of 3 to 6 MW each, for a combined total generating capacity of up to 504 MW. The wind turbines would be located within an approximately 26,000-acre site in southeast Albany County, Wyoming, roughly centered on the town of Tie Siding and bisected by U.S. Highway 287. The turbines would be located in a varying number of generally north-south oriented strings of varying lengths, with the strings being approximately one-half mile apart. Separation between turbines, between turbine strings, and the number of turbine strings would vary with different turbine sizes. Each turbine would have a maximum height of up to 675 feet to the blade tip, and a permanent footprint including base, transformer, and associated pads of about one-tenth of an acre.

In addition to the turbines, temporary access roads and permanent all-weather access roads to each turbine location would be required. To the extent possible, existing roads and trails would be incorporated into the access road system and upgraded as necessary. It is estimated that approximately 60 miles of new permanent all-weather access roads would be needed for the proposed Project.

Two 345-kV Project substations, one on either side of U.S. Highway 287 would be constructed. The substation sites would be about five acres in size, and each would contain one or two main power transformers, breakers and switches, control buildings, SCADA and metering equipment, a permanent meteorological tower, and other related equipment. The substations would be gravel- or crushed rock-surfaced, and enclosed by security fencing. Approximately four miles of 345-kV single circuit transmission line would connect the two Project substations with WAPA's interconnection switchyard. Up to 105 miles of 34.5-kV collection lines would connect the transformers at each turbine to the Project substations. The collection lines would typically be 34.5 kV, and would likely be a combination of buried electrical cables and overhead lines on poles 30 to 50 feet tall. To the extent practicable, the collection lines would parallel Project access roads to limit environmental disturbance and facilitate maintenance.

The proposed Project would also include eight 105-meter-tall permanent meteorological towers, four on either side of the highway, each located so as to best capture wind and other weather data. The towers would likely be of the self-supported, lattice-mast type, to eliminate the bird collision risk posed by guy wires.

An approximately 7,000-square-foot operations and maintenance (O&M) building would be constructed to support the proposed Project. The O&M building would include water, sanitary, and electrical services, and would house equipment for monitoring turbine operation and performance and a shop area for repair and maintenance. The O&M building would be located within an approximately five-acre security-fenced area, which would provide a secure yard for vehicle parking and spare components.

Several temporary laydown yards of approximately 15 acres each would be sited after biological and cultural resources surveys were completed to avoid sensitive areas. The sites would be temporarily gravel-surfaced and would serve as vehicle parking and staging areas for construction equipment and turbine and collection line components and materials. These sites would be reclaimed after completion of construction. Although mobile concrete mixing batch plants are not proposed at this time, it is possible they could be employed. As with the laydown yards, any batch plant sites would be surveyed before use, and reclaimed after construction was completed.

Although WAPA's Federal action is to consider the interconnection request and the physical interconnection to WAPA's existing transmission system, the EIS will also identify and analyze the environmental impacts of ConnectGen's entire proposed Project. ConnectGen would complete necessary coordination with State and local agencies to permit their proposed Project, while WAPA would be responsible for its interconnection switchyard.

Floodplain or Wetland Involvement

Since the proposed Project may involve action in floodplains or

wetlands, this NOI also serves as a notice of proposed floodplain or wetland action. The EIS will include a floodplain/wetland assessment and floodplain/wetland statement of findings following DOE regulations for compliance with floodplain and wetlands environmental review (10 CFR part 1022).

Environmental Issues

The location of the proposed Project is in a sparsely populated portion of southeastern Wyoming. Available overview information indicates this area has a relatively low probability of substantial natural resources conflicts. This information includes the 2012 Draft EIS for the Hermosa West Wind Energy Project (DOE/EIS–0438), which analyzed an area largely included in the proposed Project west of U.S. Highway 287. ConnectGen's siting process for the wind turbine strings and associated facilities will consider sensitive resources, and the proposed Project would be designed to avoid these areas. The EIS will evaluate the level of impact WAPA's proposed action and ConnectGen's proposed Project alternatives would have on environmental resources within the approximately 26,000-acre site, which may lead to modifications in the proposed Project to further avoid or minimize resource impacts. Although no substantive resource conflicts have been identified thus far, the EIS will analyze the potential impacts on potentially affected environmental resources. Wind turbine power generation projects are generally known to have visual and noise effects, and may affect birds and bats.

Public Participation

Interested parties are invited to participate in the scoping process to help define the important resources and issues to be analyzed in depth, and to eliminate from detailed study issues that are not pertinent. The scoping process will involve all interested agencies (Federal, State, county, and local), Native American tribes, public interest groups, businesses, affected landowners, and individual members of the public.

WAPA will consult with potentially affected tribes to jointly evaluate and address the potential Project effects on cultural resources, traditional cultural properties, or other resources important to the tribes. These consultations will be conducted in accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249), the President's memorandum of April 29, 1994, *Government-to-Government Relations with Native American Tribal Governments* (59 FR 22951), DOE-specific guidance on tribal interactions, and applicable natural and cultural resources laws and regulations.

Public informational/scoping meetings will be held as described under **DATES** and **ADDRESSES** sections at the beginning of this notice. The meetings will be informal, and attendees will be able to speak directly with WAPA and ConnectGen representatives about the proposed Project. The public is encouraged to provide information and comments on issues it believes WAPA should address in the EIS. Comments may be broad in nature or restricted to specific areas of concern, but should be directly relevant to Project issues, the NEPA process, or expected resource impacts. After gathering comments on the scope of the EIS during the 30-day scoping period, WAPA will address the issues raised in the EIS. Comments on WAPA's proposed action and ConnectGen's proposed Project will be accepted and considered at any time during the EIS process, and may be directed to WAPA as described under the **ADDRESSES** section.

WAPA's EIS process will include the public scoping meetings; consultation and coordination with appropriate Federal, State, county, and local agencies and tribal governments; involvement with affected landowners; distribution of and public review and comment on the Draft EIS; a public hearing or hearings on the Draft EIS; distribution of a published Final EIS; and publication of WAPA's Record of Decision in the **Federal Register**.

Dated: December 17, 2019.

Mark A. Gabriel,

Administrator.

[FR Doc. 2019–28222 Filed 12–27–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–84–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Great Lakes Chemical Corporation (GLCC) El Dorado, Arkansas Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to GLCC for two Class I hazardous waste injection wells located at their El Dorado, Arkansas facility. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency (EPA) by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by GLCC of the specific restricted hazardous wastes identified in this exemption reissuance request, into Class I hazardous waste injection wells WDW–5 and WDW–6 until December 31, 2026, unless the EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued October 7, 2019, and the public comment period closed on November 22, 2019, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of December 12, 2019.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WDD), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: December 12, 2019.

James R. Brown,

Associate Director, Safe Drinking Water Branch.

[FR Doc. 2019–28209 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10003–86–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Blanchard Refining Company LLC (Blanchard) Texas City, Texas Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Blanchard for three Class I hazardous waste injection wells located at their Texas City, Texas facility. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency (EPA) by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Blanchard of the specific restricted hazardous wastes identified in this exemption reissuance request, into Class I hazardous waste injection wells WDW–80, 127 and 128 until December 31, 2037, unless the EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. The public comment period for this decision was from 9/30–11/15/19 and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of December 3, 2019.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WDD), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: December 3, 2019.

Charles W. Maguire,

Director, Water Division.

[FR Doc. 2019–28218 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0131; FRL–10003–15]

High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA) and Initiation of Risk Evaluation on High-Priority Substances; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required under section 6(b) of the Toxic Substances Control Act (TSCA) and implementing regulations, EPA is designating 20 chemical substances as High-Priority Substances for risk evaluation. This document identifies the final designations and Agency rationale for the chemical substances and provides instructions on how to access the chemical-specific information, analysis and basis used by EPA to support final designations for the chemical substances. A designation of a substance as a High-Priority Substance is not a finding of unreasonable risk. However, the designation of these chemical substances as high-priority substances constitutes the initiation of the risk evaluations on the substances.

DATES: The designations of High-Priority Substances for risk evaluation in this notice are effective December 20, 2019.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0131, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. In addition, the docket ID numbers for the individual chemical substances designated in Unit IV. are: EPA–HQ–OPPT–2018–0451; EPA–HQ–OPPT–2018–0501; EPA–HQ–OPPT–2018–0503; EPA–HQ–OPPT–2018–0444; EPA–HQ–OPPT–2018–0446; EPA–HQ–OPPT–2018–0426; EPA–HQ–OPPT–2018–0427; EPA–HQ–OPPT–2018–0465; EPA–HQ–OPPT–2018–0428; EPA–HQ–OPPT–2018–0504; EPA–HQ–OPPT–2018–0433; EPA–HQ–OPPT–2018–0434; EPA–HQ–OPPT–2018–0488; EPA–HQ–OPPT–2018–0438; EPA–HQ–OPPT–2018–0430; EPA–HQ–OPPT–2018–0462; EPA–HQ–OPPT–2018–0458; EPA–HQ–OPPT–2018–0459; EPA–HQ–OPPT–2018–0421; and EPA–HQ–OPPT–2018–0476. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the dockets available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For technical information about the High-Priority Substances contact: Ana Corado, Chemical Control Division, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (Mailcode 7408M), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–0140; email address: *corado.ana@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to entities that currently or may manufacture (including import) a chemical substance regulated under TSCA (*e.g.,* entities identified under North American Industrial Classification System (NAICS) codes 325 and 324110). The action may also be of interest to chemical processors, distributors in commerce, and users; non-governmental organizations in the environmental and public health sectors; state and local government agencies; and members of the public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities and corresponding NAICS codes for entities that may be interested in or affected by this action.

B. What action is the Agency taking?

EPA is finalizing the designation 20 chemical substances as High-Priority Substances for risk evaluation pursuant to section 6(b) of TSCA, 15 U.S.C. 2605(b). This document includes a summary of comments received during the two 90-day comment periods during

which the public submitted comments on EPA's initiation of prioritization (Ref. 1) and the proposed designations of High-Priority Substances for risk evaluation (Ref. 2), as well as the Agency responses to those comments (Ref. 3).

C. Why is the Agency taking this action?

TSCA section 6(b) and implementing regulations at 40 CFR part 702, subpart A require EPA to carry out a prioritization process for chemical substances that may be designated as high priority for risk evaluation. TSCA section 6(b)(2)(B) requires that EPA ''ensure that risk evaluations are being conducted'' on at least 20 High-Priority Substances no later than three and one-half years after the June 22, 2016 date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182). EPA is finalizing the designation of the 20 chemical substances as High-Priority Substances for risk evaluation that EPA identified as candidates for High-Priority Substance designation when EPA initiated the prioritization process on March 21, 2019 (Ref. 1). EPA provided two 90-day comment periods during which the public submitted comments on the list of candidate High-Priority Substances at the initiation of prioritization (Ref. 1) and the documents supporting the proposed designations of High-Priority Substances for risk evaluation (Ref. 2). The two comment periods are required by TSCA section 6(b)(1)(C) and implementing regulations (40 CFR 702.7(d) and 702.9(g)).

D. What is the Agency's authority for taking this action?

This document is issued pursuant to TSCA section 6(b)(1).

II. Background

TSCA section 6(b)(1) requires EPA to prioritize chemical substances for risk evaluation. In accordance with TSCA section 6(b) and 40 CFR 702.7, on March 21, 2019 (Ref. 1) EPA initiated the prioritization process for 20 chemical substances identified as candidates for High-Priority Substance designation. On August 23, 2019, EPA proposed to designate the same 20 chemical substances as High-Priority Substances for risk evaluation (Ref. 2). That notice included a summary of the approach used by EPA to support the proposed designations, links to the proposed designation document for each of the chemical substances, and instructions on how to access the chemical-specific information, analysis and basis used by EPA to make the proposed designation for each chemical substance.

Under TSCA section 6(b)(1)(B) and implementing regulations (40 CFR 702.3), a High-Priority Substance is defined as ''a chemical substance that [EPA] concludes, without consideration of costs or other nonrisk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by [EPA].''

A designation of a substance as a High-Priority Substance is not a finding of unreasonable risk. Rather, when prioritization is complete, for those chemicals designated as High-Priority Substances, the Agency will have evidence on hazards and exposures that supports a finding that the substances may present an unreasonable risk of injury to health or the environment under the conditions of use. Final designation of a High-Priority Substance initiates the risk evaluation process (40 CFR 702.17), which culminates in a finding of whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use.

As described in the notice proposing to designate the 20 chemical substances as High-Priority Substances for risk evaluation (Ref. 2), ''EPA will generally use reasonably available information to screen the candidate chemical substances against the following criteria and considerations:

- The chemical substance's hazard and exposure potential;
- The chemical substance's persistence and bioaccumulation;
- Potentially exposed or susceptible subpopulations;
- Storage of the chemical substance near significant sources of drinking water;
- The chemical substance's conditions of use or significant changes in conditions of use;
- The chemical substance's production volume or significant changes in production volume; and
- Other risk-based criteria that EPA determines to be relevant to the designation of the chemical substance's priority'' 40 CFR 702.9(a). When selecting candidates for prioritization, the Agency also generally intends to consider (1) Agency priorities (with consideration of the priorities of other Federal agencies), (2) quantity and quality of information (to ensure that the information necessary to prioritize the substance is reasonably available), and (3) overall workload (the Agency will be mindful of the complexity associated with the assessment of the chemical substance to ensure timely completion of prioritization and risk evaluation of each substance) (Ref. 5).

A more detailed discussion of the information, analysis and basis used to support the proposed High-Priority Substance designation can be found in Unit IV.A of the August 23, 2019 notice (Ref. 2).

As described in 40 CFR 702.9(b), in conducting the screening review during the prioritization process, EPA considered sources of reasonably available information relevant to the review criteria as outlined in the statute (TSCA section 6(b)(1)(A)) and implementing regulations (40 CFR 702.9(a)) and consistent with the scientific standards of TSCA section 26(h), including, as appropriate, sources for hazard and exposure data listed in Appendices A and B of the TSCA Work Plan Chemicals: Methods Document (February 2012), and did not consider costs or other non-risk factors in making a proposed High Priority Substance designation (see TSCA Section 6(b) and 40 CFR 702.9).

This document is intended to fulfill the requirement in TSCA section 6(b)(1)(C)(ii) that the Administrator designate 20 chemical substances as High-Priority Substances for risk evaluation after conducting a review, as required by TSCA section 6(b)(1)(A) (see also 40 CFR 702.9(a)). After considering additional information collected from the proposed designation process, described in Unit III., EPA is finalizing the High-Priority Substance designations of the same 20 chemical substance proposed for High-Priority Substance designations, consistent with the scientific standards of TSCA section 26(h) and (i). EPA did not consider costs or other non-risk factors in making the final priority designations. Instructions on how to access the chemical-specific information, analysis, and basis used by EPA to support the final designation for each chemical substance can be found in Unit IV. A general statement of the condition(s) of use that were the primary basis for each designation is contained in Unit IV. In accordance with TSCA section 6(b)(3)(C) and 40 CFR 702.11(d), these designations will fulfill the statutory requirement to designate at least one high-priority substance upon the completion of the first 10 chemicals selected to undergo risk evaluations from the 2014 Update to the TSCA Work Plan pursuant to TSCA section 6(b)(2)(A), as announced on December 19, 2016. Pursuant to TSCA section 6(b)(3)(A), the designation

of these chemical substances as High-Priority Substances constitutes the initiation of the risk evaluations on the substances.

III. Information and Comments Received

A. Overview of Public Comments

For the candidate High-Priority Substances, comments were received in two phases:

(1) A 90-day comment period following the initiation of the prioritization process for the 20 chemical substances identified as candidates for High-Priority Substance designation. Under TSCA section 6(b)(1)(C)(i), EPA must ''request interested persons to submit relevant information on a chemical substance that [EPA] has initiated the prioritization process on, before proposing a priority designation for the chemical substance, and provide 90 days for such information to be provided'' (Ref. 1). At initiation of the prioritization process, EPA published a **Federal Register** notice identifying the chemical substances and providing a general explanation for why the Agency chose to initiate prioritization of these chemical substances. During this comment period, the public was invited to submit relevant information on the chemical substances undergoing prioritization, including, but not limited to, any information that may inform the screening review conducted pursuant to 40 CFR 702.9(a). The information received was considered when developing the proposed designations for the High-Priority Substances.

(2) a second 90-day comment period following the proposed High-Priority Substance designations of the same 20 chemical substances identified as candidates for a High-Priority Substance designation. Under TSCA section 6(b)(1)(C)(ii), EPA must ''publish each proposed designation of a chemical substance as a high- or low-priority substance, along with an identification of the information, analysis, and basis used to make the proposed designations, and provide 90 days for public comment on each such proposed designation'' (Ref. 2). The **Federal Register** notice proposing the designations of these substances as high priority for risk evaluation identified how to access the chemical-specific information, analysis, and basis used to support the proposed designations and announced the availability of a proposed designation document for each of the chemical substance undergoing prioritization. Interested persons were invited to submit comments on EPA's proposed designations, including additional information relevant to the chemical substances.

To the extent that comments from the first phase provided information on additional conditions of use for the candidate High-Priority Substances, those conditions of use were discussed in the proposed designation documents for each chemical substance. Other submitted information specific to High-Priority Substances (*e.g.,* relevant studies and assessments) was considered when making the final priority designations and will be considered in subsequent phases of the chemical-specific risk evaluations.

EPA created one general docket to receive comments regarding the prioritization process and additional individual chemical dockets to receive chemical-specific information. From both comment periods and all 21 dockets, EPA received 229 submissions; however, some commenters opted for one submission describing all their comments and submitted it to multiple dockets while other commenters chose to submit different comments to each chemical-specific docket. Therefore, EPA considered 106 unique comment submissions. EPA received submissions from 52 different entities, including 11 from private citizens, 26 from potentially affected businesses or trade associations, 8 from environmental and public health advocacy groups and academia (some submissions were signed by more than one group), 6 from other organizations, and 1 from a state government. Comments addressed the overall prioritization process (*e.g.,* the collection and consideration of relevant information), the review process (*e.g.,* the use of data and approaches for screening review), information specific to the candidate chemical substances (*e.g.,* relevant studies, assessments and conditions of use), and topics beyond this prioritization process or not related to the prioritization process in general (*e.g.,* scheduling future chemicals for prioritization, risk evaluation, risk management, and concerns about risk evaluation fees). All comments received are identified by docket ID number EPA–HQ–OPPT–2019–0131, or by docket ID numbers for the 20 individual High-Priority Substances (see Unit IV.), and available at *https://www.regulations.gov.*

EPA responded to comments related to the High-Priority Substance designations in two general ways: (1) General comments, including overarching and cross-cutting policy and process comments, received for the candidate High-Priority Substance designations; and (2) chemical-specific comments received for the candidate High-Priority Substance designations (Ref. 3). The response to comments document (Ref. 3) is included in docket ID number EPA–HQ–OPPT–2019–0131 and available at *https://www.regulations.gov.* A synopsis of comments received related to the prioritization process, and Agency responses follows. Comments received, and Agency responses on the topics of ''Request to Revise the 2014 Update of the TSCA Work Plan,'' ''Risk Evaluation,'' and ''Risk Management'' are included in the full response to comments document (Ref. 3).

B. Comments on Candidate High-Priority Designations

i. Overall Prioritization Process

a. Agency Approach and Rationale

Several commenters requested that EPA clearly explain its approach to applying the statutory considerations and criteria of TSCA section 6(b)(1)(A) during the screening review of the candidate chemical substances, as well as its rationale for proposed priority designations. Specific concerns included how EPA would address instances where new data indicated that some Work Plan chemicals identified as high-priority candidates might not satisfy the statutory criteria, including the TSCA section 26 science standards; how EPA ascertains whether the hazard potential information used to support the 2014 TSCA Work Plan is consistent with the scientific standards of TSCA section 26(h); and that ''EPA should establish risk-based screening process and criteria'' and ''should not decouple the hazard and exposure elements from the risk equation and transform them into independent considerations.''

As required by Congress and codified in the ''Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act'' Rule (40 CFR 702.1–702.17), there are two comment opportunities during the prioritization process, so that the public would have time to submit relevant information on the chemical substances considered for prioritization. EPA considered the information submitted as part of its proposed and final designations, in accordance with applicable statutory and regulatory requirements.

EPA considered several approaches and tools for identifying potential candidate chemicals for prioritization. These approaches were presented at a December 11, 2017 public meeting (Ref. 4), and there was general support for using the 2014 Work Plan chemicals as the starting point for identifying

potential high-priority candidates. TSCA section 6(b)(2)(B) further requires that 50 percent of all ongoing risk evaluations be drawn from the 2014 TSCA Work Plan for Chemical Assessments. EPA described its prioritization in the document, ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5). As presented during the meeting, selection of a chemical substance from the 2014 Work Plan as a candidate for High-Priority Substance designation does not constitute a finding of risk. These chemicals will be subject to the prioritization process for determination of high-priority designation. EPA recognizes that additional information may have been identified or developed for chemicals on the 2014 Work Plan since its issuance. As each chemical was considered for prioritization, EPA has identified and reviewed reasonably available information, including any new information and public comments, to ensure that information is consistent with the TSCA scientific standards.

For prioritization, EPA considered sources of information consistent with the scientific standards in TSCA section 26(h), including the sources listed in Appendices A and B of the ''TSCA Work Plan Chemicals Methods Document'' (February 2012), as required by the ''Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act rule (40 CFR 702.9(b)).'' EPA has used the most recent information from those sources.

EPA developed a proposed designation document for each candidate chemical substance to identify the information, analysis and basis used to support the proposed designation as a High-Priority Substance. These documents are available in the respective dockets of each chemical substance with a proposed designation as a High-Priority Substance. Also included in each document is an explanation of the approach used by EPA to conduct the review of the candidate chemical substances. Each document includes an overview of the requirements in TSCA section 6(b)(1)(A) and in the regulation addressing the ''screening review criteria'' and considerations for proposed priority designations (40 CFR 702.9). Those documents describe how EPA considered each of the applicable statutory and regulatory requirements and criteria, including those related to the ''conditions of use or significant changes in conditions of use'' and ''potentially exposed or susceptible subpopulations,'' to support the proposed designation.

EPA considered the information submitted during the two comment periods when making its proposed and final designations, in accordance with applicable statutory and regulatory requirements. To the extent that comments from the first phase provided information on additional conditions of use of the candidate High-Priority Substances, those conditions of use were discussed in the proposed designation document for each chemical substance. Other submitted information specific to High-Priority Substances (*e.g.,* relevant studies and assessments) was considered when making the final priority designations. EPA is not revising the proposed designation documents; however, information received during the two comment periods does not need to be re-submitted and will be considered in subsequent phases of the chemical-specific risk evaluations.

TSCA section 6(b)(1)(A) requires EPA to determine whether a chemical may present unreasonable risk ''because of a potential hazard and a potential route of exposure'' under the conditions of use. EPA interpreted this as a requirement to consider hazard and exposure as separate factors that together inform the risk-based priority designations. EPA also clarifies that the prioritization process did not include an update of the 2014 Update to the TSCA Work Plan for Chemical Assessments.

b. Potentially Exposed or Susceptible Subpopulations

A commenter urged EPA to identify relevant potentially exposed or susceptible subpopulations (PESS), including infants, children, pregnant women, workers, the elderly, and people living in proximity to sources of contamination, as well as consider environmental justice concerns in the prioritization process. Another commenter indicated that ''Tribes must be considered as a sensitive subpopulation under TSCA'' given the ''unique lifeways that place them at different risk due to multiple exposure pathways not experienced by the general population,'' such as diet, housing, worker safety protocols, untreated drinking water, daily and ceremonial steam baths, artisanal activities, subsistence activities, and recreational activities.''

While ''potentially exposed or susceptible subpopulations'' is a new definition in TSCA, EPA has, in practice, evaluated risks across populations, with particular attention to workers, pregnant women, children, infants and the elderly, among others (Ref. 6). The Agency will continue to use and refine its processes for risk evaluations to determine risks to potentially exposed or susceptible subpopulations. Human health and environmental hazards, as well as environmental and human exposures, including potentially exposed or susceptible subpopulations, will be further considered during the development of the TSCA scope documents for all High-Priority Substances. ''Potentially exposed or susceptible subpopulations'' could include subpopulations with unique lifeways, such as tribes, and will be considered as part of the risk evaluation process for each of the High-Priority Substances. In addition to requirements under TSCA regarding ''potentially exposed or susceptible subpopulations,'' the Agency is committed to consultation and coordination with Tribes (*e.g.,* EPA Policy on Consultation and Coordination with Indian Tribes, *https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes*).

In the review conducted for the final designations, EPA considered reasonably available information to identify the relevant potentially exposed or susceptible subpopulations, such as children, women of reproductive age, workers or consumers. EPA analyzed processing and use information reported under the Chemical Data Reporting (CDR) Rule, which—among other data elements reported—captures manufacturer-reported information regarding a chemical in children's products. These data provide an indication about whether children or other susceptible subpopulations may be potentially exposed to the reported chemical. EPA also used human health hazard information to identify potentially exposed or susceptible subpopulations.

c. Selection of Candidate Chemicals for Prioritization

Some commenters offered thoughts on future efforts to select candidate chemicals for prioritization, including urging EPA to allow data to drive the priority designation, to merge the high- and low-priority considerations into a singular section for potential candidates for prioritization, and to give preference in designating High-Priority Substances to the substances identified by TSCA section 6(b)(2)(D).

Generally, EPA intends to use reasonably available information in the prioritization process. EPA generally expects to provide an explanation in proposed designation documents for why it chose to initiate the process for

the particular chemical substance (*e.g.,* whether EPA views this as a potential candidate for a High- or Low-Priority Substance) (Ref. 7). This is to avoid sending strong signals to the public regarding potential risks, even if certain uses of that chemical did not prompt the initiation of prioritization. Note that a proposed or final priority designation is not a finding of unreasonable risk by the Agency. In addition, EPA further notes that the two comment periods provided an opportunity for any interested person to submit additional information before EPA finalized a designation for a candidate chemical substance.

In the **Federal Register** notice initiating the prioritization process (Ref. 1) and ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5), EPA described the three factors that the Agency generally intends to consider for selecting candidates for prioritization. These are (1) Agency priorities (with consideration of the priorities of other Federal agencies), (2) quantity and quality of information (to ensure that the information necessary to prioritize the substance is reasonably available), and (3) overall workload to inform the selection of candidates (the Agency will be mindful of the complexity associated with the assessment of the chemical substance to ensure timely completion of prioritization and risk evaluation of each substance) (Ref. 5). TSCA requires that EPA give preference to chemical substances listed in the 2014 TSCA Work Plan for Chemical Assessments that are persistent and bioaccumulative; known human carcinogens; and/or highly toxic, based on scores and criteria documented in the 2014 update of the TSCA Work Plan for Chemical Assessments and the Work Plans Methods Document. TSCA section 6(b)(2)(B) further requires that 50 percent of all ongoing risk evaluations be drawn from the 2014 TSCA Work Plan for Chemical Assessments. Aside from these statutory preferences, however, TSCA does not specifically limit how EPA must ultimately select a chemical substance for prioritization. In practice, EPA strives to designate as High-Priority Substances those chemicals with the greatest hazard and exposure potential first, consistent with the policy objectives codified in 40 CFR 702.5(a) (Ref. 6).

d. Stakeholder Engagement and Transparency

Several commenters supported stakeholder engagement and transparency during the prioritization process, including maintaining an open and transparent process that ''encourages submission of the most relevant information,'' providing ''greater transparency and clarity'' and ''more information to ascertain what information [EPA] already has and what information is needed,'' and stating that ''transparency and information exchange is critical to the success of future prioritization efforts.'' Other commenters indicated shortcomings with the transparency of the process and/or provided recommendations for improvements, including placing all the ''reasonably available information'' in the dockets for public review, increasing transparency about the information received during the initiation of public comment period and indicating if EPA used that information to screen the chemical against the criteria for proposing a priority designation, so that members of the public can comment on such information during the proposed designation comment period.

EPA appreciates the feedback regarding engaging with stakeholders and transparency. Regarding the process and criteria used, as described in Unit III.A. of the **Federal Register** notice initiating prioritization of the candidates for a high priority designation (Ref. 1), EPA used the 2014 Update to the TSCA Work Plan for Chemical Assessments as the starting point for identifying potential candidates: (1) Agency priorities (with consideration of the priorities of other Federal agencies), (2) quantity and quality of information (to ensure that the information necessary to prioritize the substance is reasonably available), and (3) overall workload (the Agency will be mindful of the complexity associated with the assessment of the chemical substance to ensure timely completion of prioritization and risk evaluation of each substance) (Ref. 5).

EPA's intention was to engage with stakeholders in a transparent manner by publishing the notice initiating the prioritization process and the notice with the proposed priority designation, as well as to seek relevant reasonably available information from the public (Ref. 7). EPA developed a proposed designation document for each candidate chemical substance to identify the information, analysis and basis used to support the proposed High-Priority Substance designations. These documents also include citations for all references used in the literature review of each of these chemical substances, as requested by the commenters, and links to those references that are publicly available. EPA's commitment to public engagement will continue throughout the risk evaluation process of the 20 chemical substances designated as High-Priority Substances.

e. Designation Terminology

The Agency received comments related to designation terminology, including a request to clarify the definition of what is a High-Priority Substance and that a high-priority designation indicates neither risk nor unreasonable risk, given the potential for marketplace stigmatization for a chemical substance.

The Agency is not elaborating on or modifying statutory standards for High-Priority and Low-Priority Substances (Ref. 6). The Agency believes it is appropriate to rely on the statutory standards for designating High-Priority and Low-Priority Substances. These definitions have been codified in 40 CFR 702.3 as:

> High-priority substance means a chemical substance that EPA determines, without consideration of costs or other non-risk factors, may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, including an unreasonable risk to potentially exposed or susceptible subpopulations identified as relevant by EPA.
>
> Low-priority substance means a chemical substance that EPA concludes, based on information sufficient to establish, without consideration of costs or other non-risk factors, does not meet the standard for a High-Priority Substance.

However, the commenters are correct that designation as a High-Priority Substance is not a finding of unreasonable risk; rather a final designation as a High-Priority Substance will initiate the risk evaluation for the chemical substance. It is through the risk evaluation process that EPA determines whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use (Ref. 2). EPA has included clear language for the final designations of High-Priority Chemical Substances in that regard.

f. Timeframe for Providing Chemical Substance Information

Commenters described the challenges in collecting, identifying, assessing, and submitting specific chemical data in the 90-day comment period following the initiation of the prioritization process including challenges gathering information that resides with international downstream suppliers, limitations of available data gathering tools, and time and resource requirements, including a call for additional time during the comment period. Another commenter agreed that EPA ''could use its authority under

TSCA 4(a)(1)(A)(i) [to require the development of new information before initiating prioritization] and that it could also use its authority under 4(a)(1)(A)(ii) for chemicals that meet the statutory criteria of being produced and potentially released in substantial quantities or if there is potentially significant exposure,'' while noting the ''difficulty in making a may present unreasonable risk finding as required under 4(a)(1)(A)(i) was among the motivations for amending TSCA, and this difficulty would still need to be overcome.'' The commenter then stated that ''timing requirements might indeed be difficult to meet in some cases, [but] such difficulty does not remove the clear requirement under 4(a)(2)(B)(i) to make a priority designation within 90 days of receipt of any information requested.''

EPA understands such challenges and has been committed to giving the public and interested stakeholders ample opportunity to provide relevant chemical substance information and comment on key aspects of the prioritization process in general, as well as for a particular chemical substance. The prioritization process was designed, by law, to take no fewer than nine months, and no greater than 12 months—a timeframe set by Congress to be long enough for interested stakeholders to provide the Agency with relevant, necessary information, but not so long as to stigmatize the chemical substance for being on an EPA list without undergoing a formal risk evaluation. Therefore, EPA does not have the discretion to adjust the timeframe for prioritization beyond the 12-month limit established by Congress. Within that nine- to 12-month timeframe under the statute, there are two three-month comment periods (following initiation and proposed designation for the substances), for a total of six months for public comment during the prioritization process. In advance of that process, to facilitate the sharing of information by stakeholders and the general public, EPA opened dockets for each of the 2014 TSCA Work Plan chemicals and an additional general docket to provide the public with a venue for submitting use, hazard, and exposure information on these chemicals (Ref. 8). As an additional step to expedite information sharing, EPA has also separately met with stakeholders interested in providing information; summaries of those meetings are docketed for each relevant chemical. EPA encourages interested persons to provide chemical substance information and other comments as early as possible in the process and notes that, for High-Priority Substances, the risk evaluation process includes additional opportunities for comment.

Regarding the Agency's data collection authority, 40 CFR 702.9 outlines the type of information sources EPA will use to inform the screening review described in 40 CFR 702.9. For the 20 chemicals identified as candidates for High-Priority Designation, EPA initiated the prioritization process with reasonably available information necessary to complete the prioritization assessment and make final priority designations and considered additional information submitted during the two comment periods when making its proposed and final designations, in accordance with applicable statutory and regulatory requirements. In future prioritization actions, EPA may identify data needs and may use the Agency's TSCA authority under TSCA sections 4, 8, or 11, as appropriate. EPA may also exercise these authorities for risk evaluation purposes.

g. Confidential Business Information

One commenter urged EPA to implement the requirements of TSCA section 14 when prioritizing chemical substances, urging adherence to the requirements for disclosure of certain information by the Agency and the timing for confidentiality claims and substantiations.

EPA is committed to meeting its statutory obligations, including those in TSCA section 26(j), to make information available to the public relating to its basis for priority designations, including identification of the information and analysis used. EPA generally expects to make the information it uses for decision making publicly available, consistent with the requirements of TSCA section 14.

h. International Obligations

One commenter suggested that EPA designate mercury as a High-Priority Substance to enable the United States to meet its international obligations to reduce mercury use in product manufacturing and industrial processes.

As indicated by the commenter, EPA agrees that it may take into consideration relevant international actions, such as multilateral environmental agreements, global and regional partnerships, and bilateral or international commitments. However, for this first prioritization, EPA decided to focus on chemicals listed in the 2014 Update to the TSCA Work Plan for Chemical Assessments and considered three factors (*i.e.,* Agency priorities, quantity and quality of information, and overall workload) to inform the selection of candidates (Ref. 8). Mercury and mercury compounds were not included in the 2014 Update to the TSCA Work Plan because, as stated in the 2014 Work Plan Update document, their hazards are already well characterized and the Agency has a strong risk reduction effort in place.

i. General Support of the Prioritization Process or Proposed Designation

Several commenters supported ''EPA's selection of the substances subject to this notice for prioritization for risk evaluation under TSCA'' and the pragmatic approach to initiating prioritization using the 2014 TSCA Work Plan for Chemical Assessments list and the approach to consideration of reasonably available information on exposure potential. Other commenters indicated that the proposed designation documents for the 20 High-Priority candidate substances establish that the chemicals ''may present an unreasonable risk of injury to health or the environment because of a potential hazard and potential route of exposure under the conditions of use'' and that the proposed chemicals meet the High-Priority Substance definition.

The Agency appreciates this feedback regarding the prioritization process and the proposed designations.

j. Designation Conclusions for Specific Chemicals

EPA received various comments related to its conclusions for designating the High-Priority Substances, including trans-1,2-dichloroethylene, ethylene dibromide, Di-ethylhexyl phthalate (DEHP), formaldehyde, and 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB).

Based on the criteria and considerations set forth in 40 CFR 702.9, EPA determined that all candidate High-Priority Substances may present an unreasonable risk of injury to health or the environment because of a potential hazard and a potential route of exposure under the conditions of use, which is required for designating a chemical substance as high priority. With respect to chemical-specific comments (including those on trans-1,2-dichloroethylene, ethylene dibromide, and DEHP), EPA referenced information submitted by commenters in the proposed designation documents and considered additional information submitted regarding the proposed designations when making the final priority designations. EPA will describe the hazards, exposures, conditions of

use, and potentially exposed or susceptible subpopulations that EPA expects to consider in each risk evaluation during the scoping phase of the respective TSCA risk evaluations. Any determination of unreasonable risk for a condition of use will occur as part of the risk evaluation process and will be presented with the draft risk evaluation for which the public and peer reviewers will be given an opportunity to review and comment on. With respect to comments related to specific candidate High-Priority Substances, additional responses are included in the Agency's full response to comments document (Ref. 3).

ii. Review Process for Priority Designation

a. Types of Information Considered for Prioritization

Commenters urged the Agency to consider a variety of information sources and to outline the types and quality of data required when listing a chemical for the prioritization process, including EPA resources and programs, those administered by other domestic and international governmental agencies, and information from other public and private entities. In particular, several commenters called on the Agency to rely on reasonably available information and strive to use the best available science; to provide notice, specifications, and transparency should new data be required to be developed; and to rely on manufacturer-conducted studies ''only if it has access to and independently evaluates all available underlying data and discloses the full studies to the public without material redaction as required by section 14(b) of TSCA'' and industry-generated summaries that ''faithfully reflect the study findings.''

EPA determined that the 20 chemical substances were suitable candidates for the High-Priority designation based on the Agency's review of the reasonably available information, including relevant information received from the public and other information, as appropriate and cited in the proposed designation documents. The reasonably available information was reviewed against the criteria and considerations set forth in 40 CFR 702.9 and supported a finding that each substance may present unreasonable risk.

While EPA appreciates the suggestions on information sources that EPA should use in its prioritization process, the Agency does not believe it would be appropriate to limit its analysis to certain specific data sources. EPA expects to consider the reasonably available information that is consistent with 15 U.S.C. 2625(k) in conducting its review, including information identified by commenters. Furthermore, EPA described in detail its approach to determine the quantity and quality of information reasonably available for prioritization in the document ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5), and in the discussion of the Agency's working approach to selecting candidates for designation as High-Priority Substances, as described in Unit III.A of the **Federal Register** notice initiating prioritization of the candidates for a high priority designation (Ref. 1).

For the 20 chemicals identified as candidates for High-Priority Designation, EPA initiated the prioritization process with reasonably available information to complete the prioritization assessment and make final priority designations and considered additional information submitted during the two comment periods when making its proposed and final designations, in accordance with applicable statutory and regulatory requirements. In future prioritization actions, EPA may identify data needs and may use the Agency's authority under TSCA sections 4, 8 or 11, as appropriate. EPA may also exercise these authorities for risk evaluation purposes. Human health and environmental hazards, as well as environmental exposures and human exposures including potentially exposed or susceptible subpopulations, will be further considered development of the TSCA scope documents for all High-Priority Substances.

Through the prioritization and risk evaluation processes, EPA generally considers reasonably available information consistent with the TSCA scientific standards. For prioritization, EPA considered sources of information consistent with the scientific standards in TSCA section 26(h) and (i), including the sources listed in Appendices A and B of the ''TSCA Work Plan Chemicals Methods Document'' (February 2012), as required by the ''Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act'' rule (40 CFR 702.11). EPA used the most recent information from those sources. Also, EPA recognizes that additional information may have been developed for certain chemicals on the 2014 Work Plan, and EPA considered updated information as appropriate during the prioritization process. EPA cited the references used in each of the proposed designation documents for High-Priority Substances.

As part of the process of using systematic review in the development of risk evaluations, EPA will conduct a comprehensive search of the reasonably available information about the human health and environmental hazards, as well as environmental exposures and exposure to the general population, to consumers, workers, and other potentially exposed or susceptible subpopulations, for each of the 20 High-Priority substances. After this data gathering effort, the Agency will evaluate the quality of the information and integrate the evidence to form overall conclusions about the potential hazards and exposures to support the risk characterization for each of the 20 High-Priority substances in the TSCA risk evaluation documents. This systematic review process will be documented and made public. EPA expects to make the information it uses for decision-making publicly available, consistent with the requirements of TSCA section 14.

b. Agency Efforts to Describe Data Needs

Commenters urged EPA to ''continue explicitly outlining the types and quality of data required when listing a chemical for the prioritization process'' and to provide such information from the outset so that stakeholders may contribute information sooner rather than later. Another commenter cited the data supporting the EPA's chemical prioritization process in stating that ''EPA has provided only the barest of rationale for high priority selection, in most cases reiterating data used in support of the TSCA workplan listings'' and that access was lacking to adequate data to understand EPA's rationale in order to comment on this process in a meaningful way.

The Agency points to the discussion of its working approach to selecting candidates for designation as High-Priority Substances: ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5) and the explanation that EPA surveyed the information and checked quality data elements in a step-wise approach, which ensured responsible and timely completion of the prioritization process according to TSCA timelines, and opened dockets to allow for public comment on the prioritization of each of the chemicals.

EPA developed a proposed designation document for each substance to identify the information, analysis, and basis used to support the proposed designation as a High-Priority Substance for risk evaluation. The proposed designation documents are available in the docket of each of the

High-Priority Substances. Moreover, these documents describe how EPA considered applicable statutory and regulatory requirements and criteria for the prioritization process and supported the High-Priority designations. Specifically, EPA conducted reviews of each of the candidate chemical substances against the criteria and considerations set forth in 40 CFR 702.9 and found that each chemical substance ''may present unreasonable risk'' under the conditions of use. The information sources used are relevant to the applicable criteria and considerations, and consistent with the scientific standards of TSCA section 26(h), and the sources include, as appropriate, hazard and exposure data listed in Appendices A and B of the ''TSCA Work Plan Chemicals: Methods Document'' (February 2012) (40 CFR 702.9(b)). Therefore, final designation of each chemical substance as a High-Priority Substance is consistent with TSCA section 26(h) and (i) as required under 40 CFR 702.11. These documents also include citations for all references used in the literature review of each of these chemical substances and links to those references that are publicly available.

The final designation as a High-Priority Substance immediately initiates the risk evaluation process as described in 40 CFR 702.17. EPA will conduct a systematic review to further characterize the hazards and exposures resulting from the relevant TSCA conditions of use during the scoping phase of the TSCA risk evaluations for chemicals designated as High-Priority Substances.

c. Identification of Conditions of Use and Persistence/Bioaccumulation for Prioritization Purposes

One commenter supported the comprehensive identification of the conditions of use in commerce for chemicals during prioritization and urged EPA to ''ensure that the conditions of use are clearly distinguished from those that may cause a chemical to meet the definition for high priority for risk evaluation'' by a comprehensive identification of the conditions of use and identification of information needs, as early as possible; consideration of incidental presence of a chemical as an impurity or releases to the aquatic environment or air emissions; and identifying uses with no unreasonable risk as early as possible. Similarly, another commenter recommended that EPA evaluate chemicals in such a way as to identify the conditions of use that meet the high priority criteria and identify conditions of use that do not present an unreasonable risk at all, stating this approach would ''prevent stigmatizing large number of chemicals by incorrectly suggesting that entire categories of chemicals are unsafe for any type of use, regardless of exposure potential.'' Conversely, another commenter indicated that EPA could designate a chemical substance as High-Priority for risk evaluation based on only a few conditions of use. Other commenters offered specific suggestions for EPA's consideration of conditions of use, including: Exempting the import of articles and fluids, adhesives, greases, etc. contained within articles and not designed to be released during the use of the article; as well as a similar exemption for replacement parts; clarifying about the conditions of use on which a chemical is proposed as a High-Priority Substance and whether uses ''surrounding'' pesticides, food additives, drugs or cosmetics exclude them from the TSCA definition of a chemical substance; and consulting with downstream users to complement the information and to engage stakeholders to develop a process to improve the understanding of conditions of use. A commenter supported the use of physical/chemical characteristics and environmental fate data as indicators for ascertaining the potential for persistence and bioaccumulation for prioritization purposes. The commenter recommended that EPA consider more recent developments in understanding of persistence and bioaccumulation and update the criteria applied to the 2014 TSCA Work Plan for Chemical Assessments.

EPA developed a proposed designation document for each substance to identify the information, analysis and basis used to support the proposed designation as a High-Priority Substance for risk evaluation. The proposed designation documents are available in the docket of each of the High-Priority Priority Substances (see Unit IV.). These documents describe how EPA considered applicable statutory and regulatory requirements and criteria for the prioritization process and supported the High-Priority designations. Specifically, EPA presented the reviews of each of the candidate chemical substances against the criteria and considerations set forth in 40 CFR 702.9 and found that each chemical substance ''may present unreasonable risk'' under the conditions of use. EPA determined that all candidate High-Priority Substances may present unreasonable risk for at least one condition of use, which is required for designating a chemical substance as a high priority for risk evaluation.

EPA identified non-TSCA uses that were reported or known to EPA in the proposed designation documents to provide interested persons with a comprehensive description of the uses of the individual chemical substances undergoing prioritization. However, in the scope documents for each High-Priority Substance, EPA will present the conditions of use covered under TSCA that EPA expects to consider in the risk evaluation.

Designation as a High-Priority Substance is not a finding of unreasonable risk; rather, a final designation as a High-Priority Substance initiates the risk evaluation for such chemical substance. Furthermore, during the risk evaluation process, EPA will determine whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use. If unreasonable risk is identified, then the Agency will initiate any necessary risk management actions to address such risks. At that point, TSCA section 6(g) exemptions could be considered. EPA is also clarifying that the prioritization process did not include an update of the 2014 Update to the TSCA Work Plan for Chemical Assessments.

d. Reasonably Available Information for Prioritization

A commenter called upon the Agency to define ''sufficiency of information'' and clarify how the Agency would treat exposure data gaps before initiating the prioritization process to ''help industry submit necessary information during the prioritization process.'' Similarly, other commenters stated that a lack of information should not lead to an assumption that a potential hazard or a route of exposure is absent and offered suggestions on minimum amounts and/or specific kinds of data EPA would need to make determinations for developmental toxicity, reproductive toxicity, carcinogenicity, and adverse endocrine effects.

EPA has purposefully decided not to establish a threshold for ''sufficient information.'' The Agency does not wish to create a bright line that could lead to High-Priority designations and the initiation of risk evaluations because EPA bound itself to an inflexible ''sufficiency'' standard (Ref. 6). For the 20 chemicals identified as candidates for High-Priority Designation, EPA initiated the prioritization process with reasonably available information necessary to complete the prioritization assessment and make final priority

designations and considered additional information submitted during the two comment periods when making its proposed and final designations, in accordance with applicable statutory and regulatory requirements. In future prioritization actions, EPA may identify data needs and may use the Agency's authority under TSCA sections 4, 8 or 11, as appropriate. EPA may also exercise these authorities for risk evaluation purposes. Furthermore, EPA notes that section 4(a)(2)(1)(ii) indicates: ''information required by the Administrator under this subparagraph shall not be required for the purposes of establishing or implementing a minimum information requirement of broader applicability.''

e. Storage Near Significant Sources of Drinking Water

One commenter asked the Agency to define ''near'' and ''significant'' in the context of ''near significant sources of drinking water'' and suggested the use of EPA's ''Drinking Water Mapping Application to Protect Source Waters (DWMAPS)'' to do so. Another commenter indicated that EPA used a reasonable approach for screening the first 20 chemicals as High-Priority Substances; however, EPA should consider use of improved exposure models that can better predict fate and environmental partitioning into water sources. Another commenter urged the Office of Pollution Prevention and Toxics within EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) to coordinate with the Office of Ground Water and Drinking Water to ''effectively prioritize chemicals which have the potential of impacting drinking water sources, both ground water and surface water.''

EPA believes that Congress included ''storage near significant sources of drinking water'' as a potential human health hazard and exposure consideration, given that chemicals that are stored near water have a greater potential to enter that water (Ref. 6). In each proposed designation document, EPA explains its analysis of the ''storage near significant sources of drinking water'' under 40 CFR 702.9 as follows: ''The statute specifically requires the Agency to consider the chemical substance's storage near significant sources of drinking water, which EPA interprets as direction to focus on the chemical substance's potential human health hazard and exposure. EPA reviewed reasonably available information, specifically looking to identify certain types of existing regulations or protections for the proposed chemical substances. EPA considered the chemical substance's potential human health hazards, including to potentially exposed or susceptible subpopulations, by identifying existing National Primary Drinking Water Regulations under the Safe Drinking Water Act (SDWA; 40 CFR part 141) and regulations under the [Clean Water Act] (40 CFR 401.15). In addition, EPA considered the consolidated list of chemical substances subject to reporting requirements under [the Emergency Planning and Community Right-to-Know Act] (Section 302 Extremely Hazardous Substances and Section 313 Toxic Chemicals), [the Comprehensive Environmental Response, Compensation, and Liability Act] (Hazardous Substances), and [the Clean Air Act] (Section 112(r) Regulated Chemicals for Accidental Release Prevention). Regulation by one of these authorities is an indication that the substance is a potential health or environmental hazard which, if released near a significant source of drinking water, could present unreasonable risk of injury to health or the environment.''

EPA has also considered suggestions for how ''storage near significant sources of drinking water'' might be interpreted and applied (Ref. 6). As necessary, EPA will consider overarching Agency priorities in selecting chemicals for prioritization, including information and analysis conducted by the Office of Ground Water and Drinking Water. EPA's document, ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5), states that the process to select chemicals ''may include . . . chemicals that other EPA program offices have deemed a priority for their program and suitable for current prioritization.''

iii. Submitted Data and Information

a. Data and Information on Hazard and Exposure Potential

A commenter provided information for all candidate chemicals for High-Priority designation regarding: (1) Assessments conducted by other federal agencies/countries, (2) information from ChemView, (3) availability of workplace exposure data in OSHA's database, and (4) Registration, Evaluation, Authorisation and Restriction of Chemicals registration and evaluation information. The commenter highlighted the dermal test data for p-dichlorobenzene, 1,2-dichlorobenzene, and 1,2-dichloropropane. Other commenters submitted chemical-specific information for: 4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA); [d]ibutyl phthalate (DBP); HHCB; formaldehyde; Butyl benzyl phthalate (BBP)—1,2-Benzene- dicarboxylic acid, 1- butyl 2(phenylmethyl) ester; phthalic anhydride; 1,2-dichloroethane; and 1,3-butadiene. With respect to comments related to specific candidate High-Priority Substances, additional information submitted is included in the Agency's full response to comments document (Ref. 3).

EPA appreciates the chemical-specific information submitted during the two comment periods. EPA referenced chemical-specific information submitted by commenters after initiation in the proposed designation documents and considered additional information submitted regarding the proposed designations when making the final priority designations. While EPA is not revising the proposed designation documents, all information received will be considered in the chemical-specific risk evaluation process. EPA will describe the hazards, exposures, conditions of use, and potentially exposed or susceptible subpopulations that EPA expects to consider in each risk evaluation during the scoping phase of the respective TSCA risk evaluations. Any determination of unreasonable risk for a condition of use will occur as part of the risk evaluation process and will be presented with the draft risk evaluation that the public and peer reviewers will be given an opportunity to review and comment on.

EPA identified reasonably available environmental and human health hazard information to evaluate potential hazard of the chemical, including studies reporting developmental toxicity and neurotoxicity. EPA will conduct a systematic review to further characterize the hazards and exposures resulting from the relevant TSCA conditions of use during the scoping phase of the TSCA risk evaluations for chemicals designated as High-Priority Substances.

In the Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act Final Rule (Ref. 7), EPA agreed that the consideration of alternatives is most appropriately considered as part of any risk management rule.

b. Data and Information on Potentially Exposed or Susceptible Subpopulations

A commenter stated ''[t]he general population, as well as vulnerable subpopulations, are commonly exposed to formaldehyde through both indoor and outdoor air pollution (*e.g.,* industrial processes and automotive exhaust). Workplace exposures are also a significant concern, given the breadth

of industries in which formaldehyde is known to be used or otherwise present.'' Another commenter supported EPA's high-priority designation of 1,3-butadiene and also supports designating firefighters and emergency medical personnel as susceptible populations, citing classification of 1,3-butadiene as carcinogenic to humans. Another commenter provided technical reports for some of the proposed High-Priority Substances that provide an overview of potentially exposed or susceptible subpopulations for these chemicals. Another commenter provided additional information regarding uses, production volume, production sites, and impurities for phthalic anhydride, butyl benzyl phthalate, formaldehyde and 1,3-butadiene. With respect to comments related to specific candidate High-Priority Substances, additional information is included in the Agency's full response to comments document (Ref. 3).

EPA will consider reasonably available information to characterize the environmental and human exposures, including potentially exposed or susceptible subpopulations, resulting from the conditions of use during the scoping phase of the TSCA risk evaluations for chemicals designated as High-Priority Substances.

As indicated in the proposed designation documents, when relevant, workers will be considered potentially exposed or susceptible subpopulations, such as firefighters and emergency medical personnel. EPA will also consider human health hazard information to identify potentially exposed or susceptible subpopulations, such as developmental effects, uterine cancer, or reproductive system effects. With respect to concerns raised regarding workplace exposures to formaldehyde, workers were identified as a subpopulation that may be potentially exposed or susceptible subpopulation in the proposed designation document for formaldehyde.

c. Conditions of Use or Significant Changes in Conditions of Use

EPA received various comments offering information related to condition of use for candidate High-Priority Substances, including:

- Uses of phthalic anhydride, formaldehyde, 1,3-butadiene, BBP, diisobutyl phthalate, dicyclohexyl phthalate, triphenyl phosphate, 1,1,2-trichloroethane, 1,2-dichloroethane, dibutyl phthalate, diethylhexyl phthalate, and TBBPA in paints, coatings, sealants and adhesives;
- A variety of uses in the aerospace industry for most of the candidate High-Priority Substances;
- Use of trans-1,2-dichloroethylene in the formulation of products ''which are distributed and sold to industrial end users, primarily for use in the area of medium and heavy-duty solvent precision cleaning, rinsing, and drying;''
- Use of ethylene dibromide is involved in the production of fuels; and
- Uses in automobiles for 15 of 20 of the proposed High-Priority Substances (o-dichlorobenzene, trans-1,2-DCE, 1,2-dichloroethane, 1,1,2-trichloroethane, DBP, BBP, DEHP, Di-isobutyl phthalate, Dicyclohexyl phthalate, TBBPA, Tris(2-chloroethyl) phosphate, TPP, 1,3-butadiene, formaldehyde and phthalic anhydride).

EPA referenced information submitted by commenters in the proposed designation documents and considered reasonably available information, including public comments, when making the final priority designations. EPA will consider the relevant information on conditions of use submitted by commenters during the scoping phase of the respective TSCA risk evaluations. Any determination of unreasonable risk for a condition of use will occur as part of the risk evaluation process and will be presented with the draft risk evaluation that the public and peer reviewers will be given an opportunity to review and comment on.

In the preamble for the Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act Final Rule (Ref. 7), EPA agreed that the consideration of alternatives is most appropriately addressed as part of any risk management rule. With respect to comments related to specific candidate High-Priority Substances, the full comment and description of information submitted are included in the Agency's full response to comments document (Ref. 3).

iv. Comments Related to the Long-Term Prioritization Process

a. Future and Long-Term Process To Select Candidate Substances for Prioritization

A commenter stated that ''[i]t is critical that the approaches EPA adopts for the selection of high priority and low priority candidates for further evaluation be consistent with the intent of the Lautenberg Chemical Safety Act . . . , because it will set precedent for how EPA identifies, evaluates and regulates chemicals in the future.'' Other commenters urged EPA to establish a predictable and routine schedule and to continue to engage stakeholders to articulate and clearly define its binning process. Another commenter requested that the Agency ''finalize and release its [']proof of concept[’] white paper on [‘]longer term[’] prioritization soon.''

The Agency appreciates this feedback and will take this information into consideration as it develops a longer-term prioritization strategy. As EPA stated in the document, ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization'' (Ref. 5), the approach for identifying candidates for prioritization is expected to evolve over time as EPA develops expertise in identifying chemicals to enter prioritization, as well as in conducting prioritization and risk evaluations.

For the long-term, EPA's goal is to develop a procedure to inform selection of candidates for prioritization that integrates information from new-approach methodologies (NAMs) using alternative testing data and information from traditional studies (*e.g.,* hazard, exposure, engineering, fate), and that builds on the TSCA Work Plan for Chemical Assessments methodology. Consistent with the Working Approach document, EPA also will consider federal government priorities and other interests when considering candidates for prioritization.

b. Use of Categories

One commenter indicated that in future efforts EPA may select categories of similar chemicals to prioritize together and, because of difficulties associated with categories of similar chemicals, urged EPA to ''make sure that the categories have clear and well-defined boundaries . . . [and] further clarify the criteria used to define chemical categories, such as similarities on structure, biology, or use . . . [and] provide a CAS Number for each chemical in the entire category . . . [and ensure] that the chemical accurately depicts the level of concern appropriate for all the other chemicals associated with the category.''

As stated in the preamble for the Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act Final Rule (Ref. 7), ''TSCA section 26 provides EPA with authority to take action on categories of chemical substances.'' Furthermore, ''. . . should EPA determine to prioritize a category of chemical substances, EPA would describe the basis for such a determination in the **Federal Register** notice published to initiate

prioritization'' and ''EPA will provide an explanation of the rationale for initiating the process on the chemical substance, thus ensuring the public has notice and an opportunity to comment on any decision to prioritize a category of chemical substances.''

IV. Designation as High-Priority Substances for Risk Evaluation

Based on the information provided in the August 2019 proposed designation documents, as referenced in the August 23, 2019 notice (Ref. 2), and public comments received, including information pertaining to individual chemical substances, EPA is designating the same 20 chemicals as High-Priority Substances for risk evaluation. Pursuant to 40 CFR 702.11, which states: ''For High-Priority Substances, EPA generally expects to indicate which condition(s) of use were the primary basis for such designations.'' For all 20 High-Priority Substances the manufacturing, processing, and conditions of use formed the primary basis for the designation. The final High-Priority Substance designations are:

1. *1,3-Butadiene, CASRN 106–99–0, Docket ID number: EPA–HQ–OPPT–2018–0451.*
2. *Butyl benzyl phthalate (BBP) (1,2-Benzenedicarboxylic acid, 1-butyl 2-(phenylmethyl) ester), CASRN 85–68–7, Docket ID number: EPA–HQ–OPPT–2018–0501.*
3. *Dibutyl phthalate (DBP) (1,2-Benzenedicarboxylic acid, 1,2-dibutyl ester), CASRN 84–74–2, Docket ID number: EPA–HQ–OPPT–2018–0503.*
4. *o-Dichlorobenzene (Benzene, 1,2-dichloro-), CASRN 95–50–1, Docket ID number: EPA–HQ–OPPT–2018–0444.*
5. *p-Dichlorobenzene (Benzene, 1,4-dichloro-), CASRN 106–46–7, Docket ID number: EPA–HQ–OPPT–2018–0446.*
6. *1,1-Dichloroethane, CASRN 75–34–3, Docket ID number: EPA–HQ–OPPT–2018–0426.*
7. *1,2-Dichloroethane, CASRN 107–06–2, Docket ID number: EPA–HQ–OPPT–2018–0427.*
8. *trans-1,2-Dichloroethylene (Ethene, 1,2-dichloro-, (1E)-), CASRN 156–60–5, Docket ID number: EPA–HQ–OPPT–2018–0465.*
9. *1,2-Dichloropropane, CASRN 78–87–5, Docket ID number: EPA–HQ–OPPT–2018–0428.*
10. *Dicyclohexyl phthalate (1,2-Benzenedicarboxylic acid, 1,2-dicyclohexyl ester), CASRN 84–61–7, Docket ID number: EPA–HQ–OPPT–2018–0504.*
11. *Di-ethylhexyl phthalate (DEHP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-ethylhexyl) ester), CASRN 117–81–7, Docket ID number: EPA–HQ–OPPT–2018–0433.*
12. *Di-isobutyl phthalate (DIBP) (1,2-Benzenedicarboxylic acid, 1,2-bis(2-methylpropyl) ester), CASRN 84–69–5, Docket ID number: EPA–HQ–OPPT–2018–0434.*
13. *Ethylene dibromide (Ethane, 1,2-dibromo-), CASRN 106–93–4, Docket ID number: EPA–HQ–OPPT–2018–0488.*
14. *Formaldehyde, CASRN 50–00–0, Docket ID number: EPA–HQ–OPPT–2018–0438.*
15. *1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-hexamethylcyclopenta [g]-2-benzopyran (HHCB), CASRN 1222–05–5, Docket ID number: EPA–HQ–OPPT–2018–0430.*
16. *4,4′-(1-Methylethylidene)bis[2, 6-dibromophenol] (TBBPA), CASRN 79–94–7, Docket ID number: EPA–HQ–OPPT–2018–0462.*
17. *Phosphoric acid, triphenyl ester (TPP) CASRN 115–86–6, Docket ID number: EPA–HQ–OPPT–2018–0458.*
18. *Phthalic anhydride (1,3-Isobenzofurandione), CASRN 85–44–9, Docket ID number: EPA–HQ–OPPT–2018–0459.*
19. *1,1,2-Trichloroethane, CASRN 79–00–5, Docket ID number: EPA–HQ–OPPT–2018–0421.*
20. *Tris(2-chloroethyl) phosphate (TCEP) (Ethanol, 2-chloro-, 1,1′,1″-phosphate), CASRN 115–96–8, Docket ID number: EPA–HQ–OPPT–2018–0476.*

The designations are based on the conclusion that each chemical substance satisfies the definition of High-Priority Substance in TSCA section 6(b)(1)(B) and 40 CFR 702.3. EPA developed a document for each substance to identify the information, analysis and basis used to support the proposed designations as a High-Priority Substance for risk evaluation. These documents are available in the docket of each of the chemical substances with a proposed designation as a High-Priority Substance for risk evaluation. Also included in each document is an explanation of the approach used by EPA to conduct the review. Each of the documents includes an overview of the requirements in TSCA section 6(b)(1)(A) and the regulatory section addressing the following review criteria and considerations (40 CFR 702.9).

These designated High-Priority Substances will fulfill the statutory requirement to designate at least one high-priority substance upon the completion of the first 10 chemical substances selected to undergo risk evaluations from the 2014 Update to the TSCA Work Plan pursuant to TSCA section 6(b)(2)(A), as announced on December 19, 2016 (see TSCA section 6(b)(3)(C)). Pursuant to TSCA section 6(b)(3)(A), the designation of these chemical substances as High-Priority Substances constitutes the initiation of the risk evaluations on the substances.

A designation of a chemical substance as a High-Priority Substance is not a finding of unreasonable risk; rather, a final designation as a High-Priority Substance initiates the risk evaluation for the chemical substance. This is a three-year process that will culminate in a finding of whether or not the chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use. The chemical-specific designation documents containing the information, analysis and basis used to support the proposed designations are located in the docket for each chemical substance. As previously discussed, to the extent that comments provided information on additional conditions of use for the candidate High-Priority Substances for risk evaluation, those conditions of use were noted in the proposed designation documents for each chemical substance and will be reflected in the draft scope of the risk evaluation for each chemical substance, which will include the conceptual model and analysis plan for carrying out the evaluation. As such, EPA will not amend the proposed designation documents. Instead, additional submitted information specific to High-Priority Substances (*e.g.,* relevant studies and assessments) will be considered in subsequent phases of risk evaluation, including draft scope documents and draft risk evaluation documents, both of which will be subject to public comment opportunities.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket for this action includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket. For assistance in locating these referenced documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Initiation of Prioritization Under the Toxic Substances Control Act (TSCA). Notice. **Federal Register**. (84 FR 10491, March 21, 2019) (FRL–9991–06).
2. EPA. Proposed High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA). **Federal Register**. (84 FR 44300, August 23, 2019) (FRL–9998–29).
3. EPA. EPA's Responses to Public Comments Received on the ''Proposed High-Priority Substance Designations Under the Toxic Substances Control Act (TSCA).'' December 20, 2019.
4. EPA. Meetings: New Chemicals Review Program Implementation, etc. **Federal Register**. (82 FR 51415; November 6, 2017) (FRL–9970–34).
5. EPA. ''A Working Approach for Identifying Potential Candidate Chemicals for Prioritization.'' (*https://www.epa.gov/sites/production/files/2018-09/documents/preprioritization_white_paper_9272018.pdf*). September 27, 2018.

6. EPA. ''Procedures for Prioritization of Chemicals for Risk Evaluation under TSCA''—Response to Public Comments (EPA–HQ–OPPT–2016–0636–0076). June 21, 2017.

7. EPA. Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act. **Federal Register**. (82 FR 33753, July 20, 2017) (FRL–9964–24).

8. EPA. A Working Approach for Identifying Potential Candidate Chemicals for Prioritization; Notice of Availability. **Federal Register**. (83 FR 50366, October 5, 2018) (FRL–9983–38).

(Authority: 15 U.S.C. 2601 *et seq.*)

Dated: December 20, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–28225 Filed 12–27–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16361]

Information Collection Being Submitted to the Office of Management and Budget for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 29, 2020.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.* Include in the comments the Title as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval no later than 32 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of Commission ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–XXXX.

Title: Protecting National Security Through FCC Program.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2,257 respondents; 2,257 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1.4(b)(1), 1.103(a), 151–154, 201(b), 229, 254, and 1004.

Total Annual Burden: 6,771 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission will consider the potential confidentiality of any information submitted, particularly where public release of such information could raise security concerns (*e.g.,* granular location information). We expect, however, that the public interest in knowing whether a carrier uses or owns equipment or services from Huawei or ZTE would significantly outweigh any interest the carrier would have in keeping such information confidential. Respondents may request materials or information submitted to the Commission or to the Administrator be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this new information collection to the Office of Management and Budget (OMB) under their emergency processing procedures. Under this information collection, the Commission proposes to collect information to determine the extent to which potentially prohibited equipment exists in current networks and the costs associated with removing such equipment and replacing it with equivalent equipment. The Communications Act of 1934, as amended, requires the ''preservation and advancement of universal service.'' 47 U.S.C. 254(b). The information collection requirements reported under this collection are the result of Commission actions to promote the Act's universal service goals. On November 22, 2019, the Commission adopted a Report and Order, Further Notice of Proposed Rulemaking, and Order, WC Docket No. 18–89, FCC 19–121 (*Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*). The *Report and Order* prohibits future use of Universal Service Fund (USF) monies to purchase, maintain, improve, modify, obtain, or otherwise support any equipment or services produced or provided by a company that poses a national security threat to the integrity of communications networks or the communications supply chain. It also initially designates two entities—Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE), along with their affiliates, subsidiaries, and parents—as covered companies posing such a national security threat. In the *Further Notice,* the Commission proposes to make the requirement to remove covered equipment and services from carriers' networks contingent on

the availability of a funded reimbursement program, in an effort to mitigate the impact on affected entities. The information will guide the Commission's next steps in the underlying proceeding.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28131 Filed 12–27–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0678 and OMB 3060–1167; FRS 16372]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 29, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No: FCC Form 312, FCC Form 312–EZ, FCC Form 312–R and Schedules A, B and S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents: 6,524 respondents; 6,573 responses.

Estimated Time per Response: 0.5–80 hours.

Frequency of Response: On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

Total Annual Burden: 44,992 hours.

Total Annual Cost: $16,612,586.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On August 2, 2019, the Commission released a Report and Order, FCC 19–81, in IB Docket No. 18–86, titled ''Streamlining Licensing Procedures for Small Satellites'' (Small Satellite Report and Order). In this Report and Order, the Commission adopted a new alternative, optional licensing process for small satellites and spacecraft, called the ''Part 25 streamlined small satellite process.'' This new process allows qualifying applicants for small satellites and spacecraft to take advantage of an easier application process, a lower application fee, and a shorter timeline for review than currently exists for applicants under the Commission's existing Part 25 satellite licensing rules. The Commission limited the regulatory burdens borne by applicants, while promoting orbital debris mitigation and efficient use of spectrum. The Commission's action supports and encourages the increasing innovation in the small satellite sector and helps to preserve U.S. leadership in space-based services and operations. This information collection will provide the Commission and the public with necessary information about the operations of this growing area of satellite operations. While this information collection represents an overall increase in the burden hours, the increase is due to an anticipated overall increase in number of applications as a result of additional applications being filed under the streamlined process adopted in the Small Satellite Report and Order. This information collection represents a decrease in the paperwork burdens for individual operators of non-geostationary orbit (NGSO) satellites who may now qualify for streamlined processing as small satellites, and serves the public interest by streamlining the collection of information and allowing

the Commission to authorize small satellites and spacecraft under the new process established in the Report and Order.

Specifically, FCC 19–81 contains new or modified information collection requirements listed below:

(1) Space station application requirements for qualifying small satellites and small spacecraft have been specified in new sections 25.122 and 25.123, respectively. These new sections, including the certifications, incorporate some existing information requirements from other sections, but eliminate the need for small satellite and spacecraft applicants to provide much of the information that part 25 space station applicants would typically be required to provide in narrative format under section 25.114(d). The new or modified informational requirements in sections 25.122 and 25.123 are listed as follows:

a. For small satellite applications filed under section 25.122, a certification that the space stations will operate in non-geostationary orbit, or for small spacecraft applications filed under section 25.123, a certification that the space station(s) will operate and be disposed of beyond Earth's orbit.

b. A certification that the total in-orbit lifetime for any individual space station will be six years or less.

c. For small satellite applications filed under 25.122, a certification that the space station(s) will either be deployed at an orbital altitude of 600 km or below, or will maintain a propulsions system and have the ability to make collision avoidance and deorbit maneuvers using propulsion. This certification will not apply to small spacecraft applications filed under section 25.123.

d. A certification that each space station will be identifiable by a unique signal-based telemetry marker distinguishing it from other space stations or space objects.

e. A certification that the space station(s) will release no operational debris.

f. A certification that the space station operator has assessed and limited the probability of accidental explosions resulting from the conversion of energy sources on board the space station(s) into energy that fragments the spacecraft.

g. A certification that the probability of a collision between each space station and any other large object (10 centimeters or larger) during the orbital lifetime of the space station is 0.001 or less as calculated using current NASA software or other higher fidelity model.

h. For small satellite applications filed under section 25.122, a certification that the space station(s) will be disposed of through atmospheric re-entry, and that the probability of human casualty from portions of the spacecraft surviving re-entry and reaching the surface of the Earth is zero as calculated using current NASA software or higher fidelity models. This certification will not apply to small spacecraft applications filed under section 25.123.

i. A certification that operations of the space station(s) will be compatible with existing operations in the authorized frequency band(s) and will not materially constrain future space station entrants from using the authorized frequency bands.

j. A certification that the space station(s) can be commanded by command originating from the ground to immediately cease transmissions and the licensee will have the capability to eliminate harmful interference when required under the terms of the license or other applicable regulations.

k. A certification that each space station is 10 cm or larger in its smallest dimension.

l. For small satellite applications filed under section 25.122, a certification that each space station will have a mass of 180 kg or less, including any propellant. For small spacecraft applications filed under section 25.123, a certification that each space station will have a mass of 500 kg of less, including any propellant.

m. A description of means by which requested spectrum could be shared with both current and future operators (*e.g.,* how ephemeris data will be shared, antenna design, earth station geographic locations) thereby not materially constraining other operations in the requested frequency bands.

n. For space stations with any means of maneuverability, including both active and passive means, a description of the design and operation of maneuverability and deorbit systems, and a description of the anticipated evolution over time of the orbit of the proposed satellite or satellites.

o. In any instances where spacecraft capable of having crew aboard will be located at or below the deployment orbital altitude of the space station seeking a license, a description of the design and operational strategies that will be used to avoid in-orbit collision with such crewed spacecraft shall be furnished at the time of application. This narrative requirement will not apply to space stations that will operate beyond Earth's orbit.

p. A list of the FCC file numbers or call signs for any known applications or Commission grants related to the proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants).

(2) The informational requirements listed in section 25.137 for requests for U.S.-market access through non-U.S.-licensed space stations were also modified to refer to sections 25.122 and 25.123, for those applicants seeking U.S. market access under the small satellite or spacecraft process.

This collection is also used by staff in carrying out United States treaty obligations under the World Trade Organization (WTO) Basic Telecom Agreement. The information collected is used for the practical and necessary purposes of assessing the legal, technical, and other qualifications of applicants; determining compliance by applicants, licensees, and other grantees with Commission rules and the terms and conditions of their grants; and concluding whether, and under what conditions, grant of an authorization will serve the public interest, convenience, and necessity.

As technology advances and new spectrum is allocated for satellite use, applicants for satellite service will continue to submit the information required in 47 CFR part 25 of the Commission's rules. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control Number: 3060–1167.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 3,541 respondents; 42,106 responses.

Estimated Time per Response: .50 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718

of the Communications Act, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 120,999 hours.

Total Annual Cost: $17,800.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance,'' which became effective on September 24, 2014. In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31(a) of the Commission's rules that are directly relevant to the equipment or service that is the subject of such complaint and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *https://www.fcc.gov/general/privacy-act-information.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: In 2011, in document FCC 11–151, the FCC adopted rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). See Public Law 111–260, 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617. Section 717 of the Act established new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible to individuals with disabilities, if readily achievable. 47 U.S.C. 255. Section 718 of the Act requires internet browsers built into mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619.

In document FCC 11–151, the Commission adopted rules relating to the following:

(a) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must ensure that the information and documentation that they provide is accessible to individuals with disabilities.

(b) Service providers and equipment manufacturers may seek waivers from the accessibility obligations of section 716 of the Act for services or equipment that are designed for multiple purposes, including advanced communications services, but are designed primarily for purposes other than using advanced communications services.

(c) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must maintain records of their efforts to implement those sections.

(d) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must include contact details of the person(s) authorized to resolve accessibility complaints and the agent designated for service of process.

(e) The Commission established procedures to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution, that is, as a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

In 2013, in document FCC 13–57, the FCC adopted rules to implement section 718 of the Act. In 2015, in document FCC 15–24, the FCC reclassified broadband internet access service (BIAS) as a telecommunications service that is subject to the Commission's regulatory authority under Title II of the Act and applying section 255 of the Act and the Commission's implementing rules to providers of BIAS and manufacturers of equipment used for BIAS. In 2017, in document FCC 17–166, the Commission reinstated the information service classification of BIAS.

Therefore, the Commission extracted those burdens from the collection found in OMB control number 3060–1167.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28044 Filed 12–27–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The applications listed below are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 21, 2020.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Columbia Bank, MHC and Columbia Financial, Inc., both of Fair Lawn, New Jersey;* to acquire RSB Bancorp, MHC and RSB Bancorp, Inc., and thereby indirectly acquire Roselle Bank, all of Roselle, New Jersey.

Board of Governors of the Federal Reserve System, December 17, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–28107 Filed 12–27–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than January 27, 2020.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org*:

1. *RSB Bancorp, MHC, and RSB Bancorp, Inc., both of Roselle, New Jersey;* to become a savings and loan holding company and a mid-tier savings and loan holding company, respectively, in connection with the conversion of Roselle Bank, Roselle, New Jersey, from a New Jersey state-chartered stock savings bank to a New Jersey state-chartered stock savings association.

Board of Governors of the Federal Reserve System, December 23, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28167 Filed 12–27–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 13, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *FCN Banc Corp, Brookville, Indiana;* to acquire DSA Financial Corporation and thereby indirectly acquire Dearborn Savings Bank, both of Lawrenceburg, Indiana, and thereby operate a savings association pursuant to section 4(c)(8) of the BHC Act.

Board of Governors of the Federal Reserve System, December 20, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–28001 Filed 12–27–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 27, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Genesis Bancorp, Inc., Benoit, Mississippi;* to become a bank holding company by acquiring Bank of Benoit, Benoit, Mississippi.

Board of Governors of the Federal Reserve System, December 23, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28178 Filed 12–27–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal

Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 23, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *First Horizon National Corporation, Memphis, Tennessee;* to acquire IBERIABANK Corporation and thereby indirectly acquire IBERIABANK, both of Lafayette, Louisiana.

B. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Barclays US Holdings Limited, New York, New York;* a company organized under the laws of the Cayman Islands, to become a bank holding company by acquiring Barclays US LLC, also of New York, New York, and thereby indirectly acquire Barclays Bank Delaware, Wilmington, Delaware. In addition, Barclays PLC and Barclays Bank PLC, both of London, England, to retain Barclays US Holdings Limited and thereby indirectly acquire Barclays US LLC and Barclays Bank Delaware.

Board of Governors of the Federal Reserve System, December 20, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–28000 Filed 12–27–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than January 8, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Susan Chapman Plumb, Tahlequah, Oklahoma;* to retain voting shares of Grandview Bankshares, Inc., and thereby indirectly retain voting shares of Cherokee County Bancshares, Inc. and Bank of Cherokee County, all of Hulbert, Oklahoma.

Board of Governors of the Federal Reserve System, December 20, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–27999 Filed 12–27–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1692]

Modifications to the Federal Reserve Banks' National Settlement Service and Fedwire® Funds Service To Support Enhancements to the Same-Day ACH Service and Corresponding Changes to the Federal Reserve Policy on Payment System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board of Governors (Board) has approved modifications to the Federal Reserve Banks' (Reserve Banks) payment services to facilitate adoption of a later same-day automated clearinghouse (ACH) processing and settlement window. Specifically, the Reserve Banks will extend the daily operating hours of the National Settlement Service (NSS) and the Fedwire® Funds Service. To mitigate the risk that these modified hours will cause more frequent delays to the 9:00 p.m. eastern time (ET) reopening of the Fedwire Funds Service, the Reserve Banks will modify the practice of maintaining a 2-hour window between the closing and reopening of the Fedwire Funds Service to maintain only a 90-minute window, and will increase the $1 billion value threshold for extending the closing of the Fedwire Funds Service to $3 billion. Finally, the Board has approved corresponding changes to the Federal Reserve Policy on Payment System Risk (PSR policy).

DATES: *Implementation date:* March 19, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Ballard, Senior Financial Institution and Policy Analyst (202–452–2384); Ann Sun, Lead Financial Institution and Policy Analyst (202–912–7938), Division of Reserve Bank Operations and Payment Systems; or Evan H. Winerman, Senior Counsel (202–872–7578), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202–263–4869).

SUPPLEMENTARY INFORMATION:

I. Background

On May 16, 2019, the Board published a **Federal Register** notice (Notice) seeking public comment on modifications to the Reserve Banks' payment services to facilitate adoption of a later same-day ACH processing and settlement window.[1] As described more fully in the Notice, the ACH network is made up of two network operators: The Reserve Banks, which operate the FedACH® service, and The Clearing House Payments Company L.L.C. (TCH), which operates the Electronic Payments Network (EPN) service.[2] The ACH network is governed by the rules of the ACH operators, which generally incorporate the Nacha Operating Rules

[1] 84 FR 22123 (May 16, 2019). In addition, the Board has announced that the Federal Reserve intends to explore further expanded hours for NSS and the Fedwire Funds Service, up to 24 × 7 × 365, to support a wide range of payment activities, including liquidity management in private-sector real-time gross settlement services for faster payments. *See* 84 FR 39297 (August 9, 2019). The Board is analyzing the risk, operational, and policy implications of further expanding operating hours of NSS and the Fedwire Funds Service.

[2] The Reserve Banks settle all ACH transactions that are originated or received by FedACH customers, including transactions that are exchanged between the two operators. TCH arranges settlement for only those ACH transactions that are originated and received by EPN customers (that is, transactions within the EPN network). The Reserve Banks settle ACH transactions by posting credits and debits to the sending and receiving banks' Federal Reserve accounts at the settlement time and date provided in the FedACH processing schedule. TCH uses NSS to settle its in-network ACH transactions in participants' Federal Reserve accounts, typically sending NSS files at the same times the Reserve Banks settle FedACH transactions.

and Guidelines adopted by Nacha's members.[3] Nacha amended its operating rules on September 13, 2018, to implement a later same-day ACH window.[4] The amended operating rules, however, are contingent on changes to Reserve Bank services that would enable TCH, the private-sector ACH operator, using NSS, to settle transactions between its customers during this later same-day ACH window.[5]

Currently, there are three ACH processing and settlement windows: One next-day window and two same-day windows. The two current same-day windows consist of (1) a morning window with a submission deadline at 10:30 a.m. ET and settlement at 1:00 p.m. ET and (2) an afternoon window with a submission deadline at 2:45 p.m. ET and settlement at 5:00 p.m. ET.[6] The later same-day ACH processing and settlement window outlined in the Notice would have an afternoon submission deadline of 4:45 p.m. ET and settlement at 6:00 p.m. ET, which is later than the current operating hours of NSS.[7]

The Board requested comment on (1) extending the closing time of NSS by one hour, from 5:30 p.m. ET to 6:30 p.m. ET, (2) extending the cutoff time for Reserve Bank account holders to initiate transfers on behalf of third parties via the Fedwire Funds Service (Fedwire Funds third-party cutoff) by 45 minutes, from 6:00 p.m. ET to 6:45 p.m. ET, and (3) extending the closing of the Fedwire Funds Service by 30 minutes, from 6:30 p.m. ET to 7:00 p.m. ET. These proposed changes were intended to allow sufficient time for depository institutions and their customers to reposition balances and manage liquidity between the closing of NSS, the Fedwire Funds third-party cutoff, and the closing of the Fedwire Funds Service. Table 1 summarizes the proposed changes to closings and cutoffs for Reserve Bank services, while Table 2 illustrates the proposed changes in times between service closings and cutoffs.

TABLE 1—PROPOSED CHANGES TO CLOSINGS AND CUTOFFS FOR RESERVE BANK SERVICES

	Current closings/cutoffs	Proposed closings/cutoffs
NSS closing	5:30 p.m. ET	6:30 p.m. ET.
Fedwire Funds third-party cutoff	6:00 p.m. ET	6:45 p.m. ET.
Fedwire Funds Service closing	6:30 p.m. ET	7:00 p.m. ET.

TABLE 2—PROPOSED CHANGES IN TIMES BETWEEN SERVICE CLOSINGS AND CUTOFFS

	Current time between closings/cutoffs	Proposed time between closings/cutoffs
Time between closing of NSS and Fedwire Funds third-party cutoff	30 minutes	15 minutes.
Time between Fedwire Funds third-party cutoff and closing of Fedwire Funds Service	30 minutes	15 minutes.
Time between closing of NSS and closing of Fedwire Funds Service	60 minutes	30 minutes.

The Board requested comment on how depository institutions and their customers might use a third same-day ACH window and the extended NSS/Fedwire Funds Service hours. The Board also requested comment on whether reducing the time between service closings and cutoffs would increase risks and costs for depository institutions and their customers. Additionally, the Board requested comment on certain operational and policy changes to reduce the risk that the proposed changes to service closings and cutoffs would increase the frequency of delays to the reopening of the Fedwire Funds Service. Specifically, the Board requested comment on modifying (1) the practice of maintaining a 2-hour window between the closing of the Fedwire Funds Service (for one funds-transfer business day) and the reopening of the Fedwire Funds Service (for the next funds-transfer business day) and (2) the Reserve Banks' dollar value threshold for providing extensions to the Fedwire Funds Service hours. Finally, the Board requested comment on corresponding changes to the PSR policy.

II. Summary of Comments and Analysis

The Board received 77 comments from small and midsize banks, large banks, banking trade associations, end users and associations representing end users, payment trade associations (including national and regional payment associations), third-party processors and service providers, TCH, Nacha, and other interested parties.[8] Sixty-five commenters generally supported the Board's proposed changes, 10 commenters did not support the proposed changes, and 2 commenters took no clear position.

A. Supporting the Third Same-Day ACH Processing and Settlement Window

Most commenters supported a third same-day ACH processing and settlement window alongside the proposed operating changes to Reserve Banks' payment services, emphasizing the potential benefits to banks and customers located outside the eastern time zone. These commenters believed that making same-day ACH available during greater portions of the business day could make the service more attractive for time-sensitive payments, particularly for banks and customers located in the mountain and Pacific time zones. These commenters also suggested that a third same-day ACH window may encourage more banks to offer same-day ACH services to customers.

[3] Nacha's membership consists of insured financial institutions and regional payment associations.

[4] *See https://www.Nacha.org/news/same-day-ach-will-be-enhanced-meet-ach-end-user-needs.*

[5] *See* n.2, *supra.*

[6] During each window, the ACH operators process the transactions received by the submission deadline and either distribute the transactions to the receiving depository financial institutions (RDFIs) that are their direct customers or exchange with each other the ACH transactions that are destined to RDFIs that are customers of the other operator.

[7] The actual schedules and timing are determined by each ACH operator and are not set by the Nacha Operating Rules and Guidelines.

[8] Duplicate submissions or similar comments from the same commenter were treated as a single submission. Throughout this notice, the term ''bank'' will be used to refer to any type of depository institution. Depository institutions include commercial banks, savings banks, savings and loan associations, and credit unions.

Some commenters also noted the benefits of extending NSS and Fedwire Funds Service hours for reasons unrelated to same-day ACH. Commenters suggested that extended NSS and Fedwire Funds Service hours would provide further flexibility for their customers to use these services later in the business day. Additionally, commenters suggested that these changes would incrementally improve the ability to transfer funds between Federal Reserve accounts for a private-sector real-time gross settlement service for faster payments.

Ten commenters did not support a third same-day ACH window because of potential staffing costs associated with a longer operating day and, by extension, did not support the proposed changes to the cutoff and closing times for NSS and the Fedwire Funds Service. Most of these commenters were small and midsize banks located in the eastern or central time zones that would need to modify staffing hours to cover a third same-day ACH window. These banks noted that they generally do not originate same-day ACH transactions. At the same time, 21 small and midsize banks (many located in the Pacific time zone) supported the proposed changes. The Board recognizes that adding a third same-day ACH window may incrementally increase costs for certain banks. The Board, however, believes that adding a third-same day ACH window will enhance the availability of the same-day ACH service nationwide, particularly for banks and customers in the mountain and Pacific and time zones, enabling those banks to receive advantages similar to those already experienced by banks in eastern or central time zones. In addition, supporting a third same-day ACH window would advance the Federal Reserve's ongoing objective to improve the speed and efficiency of the payment system in the United States.

B. Extending the Operating Hours of NSS and the Fedwire Funds Service

As described above, to accommodate a third same-day ACH window, the Board proposed that the Reserve Banks extend the operating hours of NSS, the Fedwire Funds third-party cutoff, and the operating hours of the Fedwire Funds Service. The Board requested comment on whether the reduction in time between the closing of NSS, the Fedwire Funds Service third-party cutoff, and the closing of the Fedwire Funds Service would pose challenges for banks' end-of-day processes.[9]

Supportive commenters generally indicated that the changes and costs associated with extending the operating hours of NSS and the Fedwire Funds Service would not be significant. While the supportive commenters noted that they would need to modify internal processes and procedures, staffing, and certain technological systems and applications, these commenters did not believe that these modifications would be extensive. These commenters indicated that they would be able to make the necessary changes by March 19, 2021, which is Nacha's current effective date for implementing the later same-day ACH window. As noted previously, some small and mid-size bank commenters were not supportive of the third same-day ACH window or the proposed changes to the cutoff and closing times for NSS and the Fedwire Funds Service.

Six commenters, including two large banks, noted that the compressed end-of-day timeline may increase the frequency of requests to extend the closing of the Fedwire Funds Service operating day; conversely, seven commenters, including one large bank, stated that the compressed end-of-day timeline would not increase the frequency of extension requests.

The Board has approved the proposed extensions to the operating hours of NSS, the Fedwire Funds third-party cutoff, and the closing of the Fedwire Funds Service. When the Reserve Banks implement these changes on March 19, 2021, NSS will close at 6:30 p.m. ET, the Fedwire Funds third-party cutoff will occur at 6:45 p.m. ET, and the Fedwire Funds Service will close at 7:00 p.m. ET. The Reserve Banks will monitor for any increased frequency of extension requests resulting from this compressed end-of-day timeline. As described further below, the Reserve Banks will take certain steps to reduce the risk that extension requests will result in more frequent delays to the reopening of the Fedwire Funds Service.

In addition, as the Board analyzed the changes further, it examined the interplay between extending the operating hours for the Fedwire Funds Service alongside the time frame for repositioning securities free of payment within the Fedwire Securities Service. Currently, the closing time for the Fedwire Securities Service for repositioning free of payment is 7:00 p.m. ET, 30 minutes after the close of the Fedwire Funds Service at 6:30 p.m. ET.[10] While the Board did not receive any comments raising concerns related to the timing for repositioning securities relative to expanding the operating hours of the Fedwire Funds Service, Reserve Bank staff intends to engage with Fedwire Securities Service participants to determine, in consultation with the Board, if a change to the closing time for repositioning securities free of payment in the relevant Operating Circular would be warranted. At this time, based on the low amount of past usage of the repositioning window, the Board believes that any potential changes to the closing time for repositioning securities free of payment at 7:00 p.m. ET would not have a long-run effect on the payment system, because that period is generally used for intraparticipant repositioning and therefore would not necessarily warrant public comment.

C. Reducing the Risk of More Frequent Delays to the Reopening of the Fedwire Funds Service

Fedwire Funds Service operating hours currently begin at 9:00 p.m. ET on the preceding calendar day and end at 6:30 p.m. ET, Monday through Friday. The Reserve Banks currently strive to maintain at least a 2-hour window between the closing and reopening of the Fedwire Funds Service to allow Fedwire participants sufficient time to complete their end-of-day cycles and processing.[11] With a change to the closing time of the Fedwire Funds Service from 6:30 p.m. ET to 7:00 p.m. ET, the window between the closing and reopening of the Fedwire Funds Service would be reduced from 2 hours and 30 minutes to 2 hours. Accordingly, if the Reserve Banks maintain their current practice of providing a 2-hour window between the closing and reopening of the Fedwire Funds Service, any extension granted to the closing of the Fedwire Funds Service would result in the delayed reopening of the Fedwire Funds Service for the next business day.[12]

The Reserve Banks allow participants to request extensions to the Fedwire Funds third-party cutoff or the Fedwire

[9] End-of-day cycles and processing typically involve the reconciliation and preparation of systems for the next cycle date as well as the production of customer statements.

[10] *See* Operating Circular 7, appendix B at *https://www.frbservices.org/assets/resources/rules-regulations/operating-circular-7-102917.pdf.*

[11] *See https://www.frbservices.org/resources/financial-services/wires/extension-guidelines.html. See also* 68 FR 28826, 28827 (May 27, 2003) (''In general, the Federal Reserve Banks will work to maintain a two-hour interim period between the close and open of Fedwire each business day'').

[12] For example, a 15-minute extension to the Fedwire Funds Service closing (from 7:00 p.m. ET to 7:15 p.m. ET) would result in a 15-minute delay to the reopening of the Fedwire business day (from 9:00 p.m. ET to 9:15 p.m. ET).

Funds Service closing time if, among other things, the dollar value of delayed transfers would exceed $1 billion.[13] The Reserve Banks also allow participants to request extensions to the NSS closing, although such requests are uncommon.[14] Extensions to the Fedwire Funds third-party cutoff, the Fedwire Funds Service closing time, or both currently occur approximately twice per month and, in most cases, do not affect the reopening time of the Fedwire Funds Service for the next business day.[15] Given the compressed end-of-day time frame, any extension to the closing of NSS or the Fedwire Funds third-party cutoff will require an extension to the Fedwire Funds Service closing time.[16] If the Reserve Banks maintain their current practice of providing a 2-hour window between the closing and reopening of the Fedwire Funds Service, any extension granted to the closing of the Fedwire Funds Service would result in the delayed reopening of the Fedwire Funds Service for the next business day.

Delays to the reopening of the Fedwire Funds Service could affect Fedwire Funds Service participants that wish to send payment orders at the start of the Fedwire Funds Service business day. On average, $35 billion is settled over the Fedwire Funds Service during the first hour of the Fedwire Funds Service business day (9:00 p.m. ET to 10:00 p.m. ET). Seven commenters, including five large banks, emphasized the importance of preserving the consistent and regular opening of the Fedwire Funds Service at 9:00 p.m. ET. These commenters noted that the CHIPS® funds-transfer system, a large-value payment system that is owned and operated by TCH, relies on the Fedwire Funds Service for prefunding at 9:00 p.m. ET.[17] These commenters also noted that the 9:00 p.m. ET opening of the Fedwire Funds Service has helped U.S. banks remain competitive in providing U.S. dollar (USD) payment services to clients in the Asia-Pacific market, consistent with the Federal Reserve's original rationale for opening the Fedwire Funds Service at 9:00 p.m. ET.[18] Commenters further stated that, if delays to the reopening of the Fedwire Funds Service were to become more frequent, customers in the Asia-Pacific markets could switch to offshore USD clearing systems or could transact in non-USD currencies.

The Board believes it is important to limit, if possible, the increase of delays to the reopening of the Fedwire Funds Service for the reasons discussed by commenters. As described below, the Reserve Banks will adopt certain operational and policy changes to limit the increase in delays to the reopening of the Fedwire Funds Service.

i. Changing the Practice of Maintaining a 2-Hour Window Between the Closing and Reopening of the Fedwire Funds Service

Seventeen commenters addressed the option of modifying the current practice of maintaining a 2-hour window between the closing and reopening of the Fedwire Funds Service to allow only a 90-minute window. Sixteen commenters, including six large banks, three small and midsize banks, three payment trade associations, two banking trade associations, TCH, and Nacha, supported the reduction to a 90-minute window. One commenter (a midsize bank) did not support this option, suggesting that a 90-minute window may not be adequate for institutions to perform their end-of-day processes.

While the Board recognizes that certain banks may need to make operational adjustments to accommodate a 90-minute window between the closing and reopening of the Fedwire Funds Service, the Board believes that reducing this window will provide a crucial 30-minute buffer (as exists today) for the Reserve Banks to extend the closing of the Fedwire Funds Service(when necessary to prevent significant market disruptions) without delaying the reopening of the Fedwire Funds Service. This buffer would limit the potential increase in delays to the 9:00 p.m. ET reopening of the Fedwire Funds Service, which would reduce disruptions and liquidity strains for institutions that expect payments at 9:00 p.m. ET and shortly thereafter. The Board has approved this modification, which the Reserve Banks will implement on March 19, 2021.

ii. Changing the Guidelines for Providing Extensions to the Fedwire Fund Service

Twenty commenters addressed the proposed option of modifying the guidelines for granting extensions to the Fedwire Funds Service hours (which have been in effect since 1997) by increasing the dollar value threshold from $1 billion to $5 billion.[19] Nine commenters, including four payment trade associations, two small and midsize banks, a large bank, a banking trade organization, and Nacha, supported the Board's proposed increase of the dollar value threshold to $5 billion. Five commenters supported the notion of increasing the threshold but did not support the Board's proposed $5 billion threshold. Of those commenters, two commenters supported increasing the threshold to $2

[13] *See* Operating Circular 6, section 10.3, and *https://www.frbservices.org/resources/financial-services/wires/extension-guidelines.html.* Additionally, if the Fedwire Funds Service experiences an operational disruption, the Reserve Banks may extend the Fedwire Funds Service closing time regardless of the dollar value still to be sent.

[14] Operating Circular 12, section 5.8, provides discretion to a Reserve Bank to extend the NSS settlement window. While extensions to the closing of NSS are uncommon, such extensions could be required when system outages or problems prevent the submission or processing of NSS files.

[15] Over a 43-month period from January 2016 through July 2019, the Reserve Banks granted 47 extensions to the closing of the Fedwire Funds Service, ultimately resulting in seven delays to the reopening of the Fedwire Funds Service. Thirty-three of these extensions were a result of extensions granted to the Fedwire Funds third-party cutoff. The Reserve Banks also granted 23 extensions to the Fedwire Funds third-party cutoff that did not require extensions to the closing of the Fedwire Funds Service. Currently, the Reserve Banks can provide up to a 45-minute extension to the Fedwire Funds third-party cutoff (from 6:00 p.m. ET to 6:45 p.m. ET) without delaying the reopening of the Fedwire Funds Service. In such circumstances, the Reserve Banks also can provide a 30-minute extension to the closing of Fedwire Funds Service (from 6:30 p.m. to 7:00 p.m. ET) and still maintain (a) a 15-minute window between the Fedwire Funds third-party cutoff and the closing of the Fedwire Funds Service and (b) a 2-hour window between the closing and reopening of the Fedwire Funds Service.

[16] The Federal Reserve has long provided at least 30 minutes between the last NSS settlement and the closing of the Fedwire Funds Service, recognizing that ''the Fedwire funds transfer service is the primary alternative for orderly and efficient settlement of bilateral obligations in case a settlement arrangement is unable to complete its multilateral settlement through NSS.'' *See* 63 FR 60000, 60004 (Nov. 6, 1998). The Fedwire Funds third-party cutoff was established to stop the flow of customer transactions and allow financial institutions a settlement period to conduct bank-to-bank transfers to adjust master account positions before the closing of the Fedwire Funds Service. The current Fedwire Funds third-party cutoff of 6:00 p.m. ET was established in 1990. *See* 55 FR 18755, 18758 (May 4, 1990).

[17] Through October 31, 2019, CHIPS cleared and settled nearly $1.7 trillion in domestic and international payments on average per day. *See https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/chips-volume_v2.pdf.* TCH noted in a comment letter that 12 percent of CHIPS transaction volume and 5 percent of daily transaction value are sent to CHIPS during the first hour of CHIPS processing, from 9:00 p.m. to 10:00 p.m. ET.

[18] In May 2003, the Board approved the expansion of the operating hours for the Fedwire Funds Service by changing the opening of the service from 12:30 a.m. ET to 9:00 p.m. ET on the previous calendar day. The Federal Reserve adopted these expanded hours in response to industry requests for greater overlap of U.S. wholesale payment system operating hours with those of the Asia-Pacific markets, including Australia, Hong Kong, Japan, and New Zealand. *See* 68 FR 28826, 28828 (May 27, 2003).

[19] One of these commenters, TCH, addressed this option but did not take a position.

billion; one commenter supported increasing the threshold by some amount less than $5 billion but did not take a position on the amount; and two commenters proposed alternative structures or measures for modifying the threshold. These commenters proposed options that involved (1) increasing the threshold to account for inflation and observed changes in the average daily value of Fedwire Funds Service transactions; (2) creating a tiered threshold, with a lower threshold for an initial extension and a higher threshold for subsequent extension requests from the same requestor on the same day; or (3) maintaining the current threshold of $1 billion for the first two fifteen-minute extension requests and increasing the threshold to $5 billion for subsequent extensions.

Finally, five commenters did not support increasing the threshold, including three commenters who did not provide a rationale for this position. The other two commenters noted that the current $1 billion threshold represents ''material value'' to Fedwire Funds Service participants, that the $1 billion threshold provides benefits to sending and receiving banks and to their respective customers, and that a higher threshold may result in more wire transfers being delayed until the next business day.

In light of these comments, the Board further assessed a range of options and scenarios for increasing the dollar value threshold for extensions to the Fedwire Fund Service. The Board's analysis assumed that the Reserve Banks would modify the policy of maintaining a two-hour window between the closing and reopening of the Fedwire Funds Service to maintain only 90 minutes.

The Board used data from a 43-month period, from January 2016 through July 2019, to analyze whether changing the dollar-value threshold would reduce the risk of more-frequent delays to the reopening of the Fedwire Funds Service. From January 2016 through July 2019, the Reserve Banks granted approximately 13 extensions per year to the Fedwire Funds Service hours, approximately 2 of which required the Reserve Banks to delay the 9:00 p.m. ET reopening of the Fedwire Funds Service.[20] Over that same period, if the Reserve Banks had maintained a $1 billion threshold but expanded the operating hours of NSS and the Fedwire Funds Service as the Board has approved in this notice, the Reserve Banks would have granted approximately 20 extensions per year, approximately 7 of which would have required a delay to the reopening of the Fedwire Funds Service. If the Reserve Banks had adopted a value threshold of $3 billion over that same period with expanded operating hours of NSS and the Fedwire Funds Service, the Reserve Banks would have granted approximately 13 extensions per year, approximately 5 of which would have required a delay to the reopening. Finally, if the Reserve Banks had adopted a value threshold of $5 billion over that period with expanded operating hours of NSS and the Fedwire Funds Service, the Reserve Banks would have granted approximately 10 extensions per year, approximately 4 of which would have required a delay to the reopening of the Fedwire Funds Service.

The Board also analyzed adjusting the $1 billion threshold to account for inflation since 1997, but that adjustment would raise the value threshold to an amount less than $2 billion, which would not materially reduce the number of extensions granted, and by extension, not reduce the number of delayed reopenings of the Fedwire Funds Service. Further, the Board believes that changing the structure of the threshold as suggested by certain commenters (for example, adopting a tiered threshold) would add unnecessary complexity to the process the Reserve Banks use to administer extensions.

The Board has approved an increase to the Reserve Banks' dollar value threshold for extension requests for the Fedwire Funds Service hours to $3 billion, starting on March 19, 2021. The Board believes that increasing the extension threshold to $3 billion will limit the increase in disruptive delays to the 9:00 p.m. ET reopening of the Fedwire Funds Service while recognizing the concerns of commenters who favored a threshold lower than $5 billion. The Reserve Banks will closely monitor delays in reopening the Fedwire Funds Service and will determine, in consultation with the Board, whether further increases to the threshold are warranted.[21]

iii. Implementing Both Options Simultaneously

The Board requested comment on whether the Reserve Banks should implement the options described above simultaneously—that is, whether the Reserve Banks should simultaneously reduce the 2-hour window to 90 minutes and increase the dollar threshold for extensions. One commenter recommended an incremental approach in which the Reserve Banks would first increase the dollar threshold and subsequently reduce the window between the closing and reopening of the Fedwire Funds Service. The commenter suggested that an incremental approach would give financial institutions more time to enhance the efficiency of their end-of-day processing. The Board believes that implementing both options simultaneously is necessary to reduce to the extent possible delays to the reopening of the Fedwire Funds Service. If the Reserve Banks were to follow an incremental approach and raise the dollar threshold before reducing the 2-hour window to 90 minutes, the Reserve Banks would grant fewer extensions to the closing of the Fedwire Funds Service, but each extension would require a delay to the reopening of the Fedwire Funds Service.

The Board has approved these modifications for implementation simultaneously on March 19, 2021.

D. Related Changes to the PSR Policy

The Board also proposed conforming changes to Part II of the PSR policy, which governs the provision of intraday credit by the Reserve Banks and establishes procedures—called ''posting rules''—for the settlement of debits and credits to institutions' Federal Reserve accounts for different payment types, to enable adding a third same-day ACH window.[22] Specifically, adopting a third same-day ACH processing window requires that the Board modify the PSR policy by adding a 6:00 p.m. ET posting time for settlement of commercial and government same-day ACH transactions and removing the current 5:30 p.m. ET posting time for ACH return transactions, because these return transactions will post at the new 6:00 p.m. ET posting time for same-day ACH transactions.[23] Additionally, extending the closing time of the Fedwire Funds Service will increase slightly the fee that an institution pays for daylight overdrafts, because (under section II.C of the PSR policy) the Reserve Banks calculate the daylight overdraft fees

[20] Over the 43-month period from January 2016 through July 2019, the Reserve Banks cumulatively granted 47 extensions to the Fedwire Funds Service hours, 7 of which required the Reserve Banks to delay the 9:00 p.m. ET reopening of the Fedwire Funds Service.

[21] The Reserve Banks will continue to use discretion when granting extensions. Also, given the comments received through this notice, the Board does not believe that a potential future change to the extension threshold would necessarily warrant public comment.

[22] The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[23] Posting of paper returns of same-day forward items that currently post at 5:30 p.m. ET will also move to the new 6:00 p.m. ET posting time.

based on the length of the standard Fedwire operating day.

Commenters supported the proposed conforming changes to the PSR policy. These changes will take effect when the Reserve Banks implement the related changes to NSS and the Fedwire Funds Service on March 19, 2021.

III. Criteria for Evaluating the Federal Reserve's Role in the Payment System

As described in the Notice, the modifications to operating hours for NSS and the Fedwire Funds Service are each considered major service enhancements. Any potential new payment service or major enhancements to an existing service must meet the following criteria: The Federal Reserve must expect to achieve full recovery of costs over the long run; the Federal Reserve must expect that its providing the service will yield a clear public benefit; and the service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.[24]

The Board expects that, over the long run, the Reserve Banks will be able to recover the costs associated with the extended operating hours. Extending the operating hours for NSS and the Fedwire Funds Service requires relatively minor technical changes and additional staffing during the extended business day, resulting in minimal one-time implementation costs and ongoing additional staffing costs. The Reserve Banks anticipate recovering these costs through existing fees charged for NSS and the Fedwire Funds Service.

The Board also expects that extending operating hours for NSS and the Fedwire Funds Service to support a third same-day ACH window will offer public benefits. Same-day ACH transactions are used for payroll (especially emergency payroll), business-to-business payments, consumer bill payments, and consumer account-to-account payments. As expressed in the feedback received from commenters, by allowing banks to submit same-day ACH transactions later in the business day, the third same-day ACH window could encourage more banks (particularly those in the mountain and Pacific time zones) to offer same-day ACH to their customers, potentially increasing usage more broadly and resulting in increased adoption of same-day ACH payments.[25] Increased usage would further advance the Federal Reserve's ongoing objective to improve the speed and efficiency of the payment system in the United States. Further, the Board believes that extending the operating hours for NSS and the Fedwire Funds Service offers public benefits for reasons unrelated to a third same-day ACH window. For example, these extended operating hours will allow banks to offer increased availability of the Fedwire Funds Service during the day to their customers.

The Board recognizes, however, that extending operating hours may increase certain risks and costs for banks and their customers, including risks and costs related to additional staffing, compression of end-of-day processing activities, decreased availability of extensions to operating hours, and more-frequent delays to the reopening of the Fedwire Funds Service. As described in this notice, the Board has approved a modification to the Reserve Banks practice of maintaining a 2-hour window between the closing and the reopening of the Fedwire Funds Service to maintain only a 90-minute window as well as an increase to the Reserve Banks threshold for granting extensions to the Fedwire Funds Service closing time from $1 billion to $3 billion to mitigate these risks and costs.

Finally, the Board does not expect that other providers alone could provide the enhanced services with reasonable effectiveness, scope, and equity. TCH relies on NSS to settle its in-network ACH transactions, including same-day ACH transactions, and so would be unable to offer a third same-day ACH window with settlement at 6:00 p.m. ET if the Reserve Banks did not extend the closing time of NSS.

IV. Competitive Impact Analysis

When considering changes to an existing service, the Board conducts a competitive impact analysis to determine whether there will be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or the Federal Reserve's dominant market position deriving from such legal differences.[26] The Board believes that there will be no adverse effects to other service providers resulting from extending the operating hours of NSS and the Fedwire Funds Service. As described earlier, the changes to NSS and the Fedwire Funds Service will allow TCH, the private-sector ACH operator, to implement the third same-day ACH window. This would promote competitive fairness between the two ACH operators.

V. Conclusion

As described above, the Board has approved the following modifications and enhancements to NSS and the Fedwire Funds Service and the Reserve Banks will implement the changes on March 19, 2021. Additionally, the Board has approved changes to the PSR policy that will take effect when the Reserve Banks implement the related changes to NSS and the Fedwire Funds Service.

A. Fedwire Funds Service Operating Hours

The Fedwire Funds third-party cutoff will occur at 6:45 p.m. ET and the closing of the Fedwire Funds Service will occur at 7:00 p.m. ET. The opening time for the Fedwire Funds Service will remain at 9 p.m. ET on the previous calendar day. The service will be available for business days Monday through Friday, except for specified holidays observed by the Reserve Banks.

B. National Settlement Service Operating Hours

The closing of the National Settlement Service will occur at 6:30 p.m. ET. The opening time for the National Settlement Service will remain at 7:30 a.m. ET.

C. Window Between the Closing and Reopening of the Fedwire Funds Service

The Reserve Banks will modify their current practice of maintaining a 2-hour window between the closing and the reopening of the Fedwire Funds Service to maintain only a 90-minute window.

D. Fedwire Funds Service Extension Threshold

The Reserve Banks will raise the threshold for granting extensions to the Fedwire Funds Service closing time from $1 billion to $3 billion. The Reserve Banks, in consultation with the Board, will determine whether further increases to the threshold are warranted to maintain the regular and consistent open of the Fedwire Funds Service at 9:00 p.m. ET.

[24] Clear public benefits include promoting the integrity of the payment system, improving the effectiveness of financial markets, reducing the risk associated with payment and securities-transfer services, or improving the efficiency of the payment system. Board of Governors of the Federal Reserve System, ''Federal Reserve in the Payment System,'' Issued 1984; revised 1990. Available at *http://www.federalreserve.gov/paymentsystems/pfs_frpaysys.htm.*

[25] In the ACH network, RDFIs are defined as entities that receive ACH transactions, while Originating Depository Financial Institutions (ODFIs) are defined as those entities that originate ACH transactions.

[26] *See* The Federal Reserve in the Payments System (issued 1984; revised 1990), Federal Reserve Regulatory Service 9–1558.

E. PSR Policy

The Board is amending part II of the PSR policy to add a new 6:00 p.m. ET posting time for same-day ACH transactions, remove the current 5:30 p.m. ET posting time for ACH return transactions, and make conforming changes to the daylight overdraft fee calculation.

VI. Federal Reserve Policy on Payment System Risk (PSR)

The Board amends part II of the PSR policy.

Revisions to Section II.A of the PSR Policy

Revise Section II.A, Opening balance (previous day's closing balance), as follows:

A. Daylight Overdraft Definition and Measurement

* * * * *

Post by 1:00 p.m. eastern time:

+/− Commercial check transactions, including returned checks

+/− Government and commercial FedACH SameDay Service transactions, including return items [34]

+ Same-day Treasury investments.

Post at 5:00 p.m. eastern time:

+/− Government and commercial FedACH SameDay Service transactions, including return items [35]

+ Treasury checks, postal money orders, and savings bond redemptions in separately sorted deposits; these items must be deposited by the latest applicable deposit deadline preceding the posting time

+ Local Federal Reserve Bank checks; these items must be presented before 3:00 p.m. eastern time

Post at 5:30 p.m. eastern time:

+/− Commercial check transactions, including returned checks

Post at 6:00 p.m. eastern time:

+/− Government and commercial FedACH SameDay Service transactions, including return items [36]

* * * * *

Revisions to Section II.C of the PSR Policy

The Board will revise section II.C, paragraph 3 of the PSR policy as follows:

C. Pricing

* * * * *

Daylight overdraft fees for uncollateralized overdrafts (or the uncollateralized portion of a partially collateralized overdraft) are calculated using an annual rate of 50 basis points, quoted on the basis of a 24-hour day and a 360-day year. To obtain the effective annual rate for the standard Fedwire operating day, the 50-basis-point annual rate is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 22-hour scheduled Fedwire operating day, the effective annual rate used to calculate daylight overdraft fees equals 45.83 basis points (50 basis points multiplied by 22/24).[55] The effective daily rate is calculated by dividing the effective annual rate by 360.[56] An institution's daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution's average daily uncollateralized daylight overdraft.

* * * * *

Revisions to Section II.F of the PSR Policy

Revise section II.F, paragraph 3 as follows:

F. Special Situations

* * * * *

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (50 basis points) plus 100 basis points multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate (currently 22/24). The daily daylight-overdraft penalty rate is calculated by dividing the annual penalty rate by 360.[74] The daylight-overdraft penalty rate applies to the institution's daily average daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty rate is charged in lieu of, not in addition to, the rate used to calculate daylight overdraft fees for institutions described in this section.

By order of the Board of Governors of the Federal Reserve System, December 20, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–28002 Filed 12–27–19; 8:45 am]

BILLING CODE P

[34] With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items that only post at 5:00 p.m.; paper returns of same-day forward items that only post at 6:00 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

[35] With the exception of paper returns of same-day forward items that only post at 6:00 p.m.

[36] With the exception of paper returns and paper notifications of change (NOCs) of prior-dated items that only post at 5:00 p.m.; and FedLine Web returns and FedLine Web NOCs that only post at 8:30 a.m. and 5:00 p.m., depending on when the item is received by Reserve Banks.

[55] A change in the length of the scheduled Fedwire operating day should not significantly change the amount of fees charged because the effective daily rate is applied to average daylight overdrafts, the calculation of which would also reflect the change in the operating day.

[56] Under the current 22-hour Fedwire operating day, the effective daily daylight-overdraft rate is truncated to 0.0000127.

[74] Under the current 22-hour Fedwire operating day, the effective daily daylight-overdraft penalty rate is truncated to 0.0000382.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032; Docket No. 2019–0003; Sequence No. 30]

Submission for OMB Review; Contractor Use of Interagency Fleet Management System Vehicles

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding contractor use of Interagency Fleet Management System vehicles.

DATES: Submit comments on or before January 29, 2020.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov*. Additionally submit a copy to GSA by any of the following methods:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the

comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles.

Instructions: All items submitted must cite Information Collection 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at telephone 202–208–4949, or email at *michaelo.jackson@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0032, Contractor Use of Interagency Fleet Management System Vehicles.

B. Needs and Uses

Federal Acquisition Regulation (FAR) 51.203 and the clause at FAR 52.251–2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, are to be used in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize, if in the best interest of the Government, the contractor to use IFMS vehicles and related services. Before such an authorization, the contracting officer must have, among other requirements: (1) A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the IFMS vehicles and services not related to the performance of the contract; (2) Evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of an IFMS vehicle; and (3) Considered any recommendations of the contractor.

Authorized contractors shall submit requests for IFMS vehicles and related services in writing to the appropriate GSA point of contact in accordance with the FAR. Contractors' requests must include: (1) Two copies of the agency authorization; (2) The number of vehicles and related services required and period of use; (3) A list of employees who are authorized to request the vehicles or related services; (4) A listing of equipment authorized to be serviced; and (5) Billing instructions and address.

C. Annual Burden

Respondents: 132.
Total Annual Responses: 132.
Total Burden Hours: 132.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 53730, on October 8, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Fleet Management System Vehicles, in all correspondence.

Dated: December 23, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–28162 Filed 12–27–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0095; Docket No. 2019–0003; Sequence No. 31]

Submission for OMB Review; Commerce Patent Regulations

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding commerce patent regulations.

DATES: Submit comments on or before January 29, 2020.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov.* Additionally submit a copy to GSA by any of the following methods:

• *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0095, Commerce Patent Regulations.

Instructions: All items submitted must cite Information Collection 9000–0095, Commerce Patent Regulations. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0095, Commerce Patent Regulations.

B. Needs and Uses

The Federal Acquisition Regulation (FAR) subpart 27.3, Patents Rights under Government Contracts, implements the Department of Commerce regulation (37 CFR 401) based on chapter 18 of title 35 U.S.C., Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies, dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology, dated April

10, 1987. Under the subpart, a contracting officer may insert the clause at FAR 52.227–11, Patent Rights-Ownership by the Contractor, or 52.227–13, Patent Rights-Ownership by the Government, in solicitations and contracts pertaining to inventions made in the performance of experimental, developmental, or research work.

In accordance with the clauses, a Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, sale, or public use of the invention (FAR 52.227–11(c), 52.227–13(e)(1)). The contracting officer may modify FAR 52.227–11(e) or otherwise supplement the clause to require contractors to submit periodic or interim and final reports listing subject inventions (FAR 27.303(b)(2)(i) and (ii)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (FAR 52.227–11, Alternate IV; 52.227–13(e)(1)). In addition, the contractor must require its employees, by written agreements, to disclose subject inventions (FAR 52.227–11(e)(2); 52.227–13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (FAR 52.227–11(f); 52.227–13(c)(1)(iii)).

C. Annual Burden

Respondents: 3,379.

Total Annual Responses: 13,200.

Total Burden Hours: 52,800.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 56192, on October 21, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0095, Commerce Patent Regulations, in all correspondence.

Dated: December 23, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–28163 Filed 12–27–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7057–N]

Announcement of the Advisory Panel on Outreach and Education (APOE); January 15, 2020 Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, January 15, 2020 8:30 a.m. to 4:00 p.m. eastern standard time (e.s.t).

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Tuesday, January 7, 2020, 5:00 p.m. eastern standard time (e.s.t).

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Room 505A, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/apoe-january-15–2020-meeting-tickets-81969951331* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the ''DATES'' section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the ''DATES'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.* Additional information about the APOE is available at: *http://www.cms.gov/Regulations-and-guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [1] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. CMS has had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and CHIP. Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace℠, or Marketplace℠ [2]). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace℠. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L. 111–5).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2019, and will terminate on January 19, 2021 unless renewed by appropriate action.

B. Charter Renewal

In accordance with the January 19, 2019, charter, the APOE will advise the HHS and CMS on developing and implementing education programs that support individuals who are enrolled in or eligible for Medicare, Medicaid, CHIP, or coverage available through the Health Insurance Marketplace℠ and other CMS programs. The scope of this Federal Advisory Committee Act (FACA) group also includes advising on education of providers and stakeholders with respect to health care reform and certain provisions of the HITECH Act enacted as part of the ARRA.

The charter will terminate on January 19, 2021, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace℠ and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace℠ consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, the CHIP and the Health Insurance Marketplace℠ education programs, and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of November 18, 2019 are: Angie Boddie, Director of Health Programs, National Caucus and Center on Black Aging, Inc.; Julie Carter, Senior Federal Policy Associate, Medicare Rights Center; Scott Ferguson, Director of Care Transitions and Population Health, Mount Sinai St. Luke's Hospital; Leslie Fried, Senior Director, Center for Benefits Access, National Council on Aging; David Goldberg, President and CEO of Mon Health System; Jean-Venable R. Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University; Louise Scherer Knight, Director, Harry J. Duffey Family Patient and Family Services Program, Johns Hopkins Sidney Kimmel Comprehensive Cancer Center; Cheri Lattimer, Executive Director, National Transitions of Care Coalition; Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated; Cathy Phan, Business Development Coordinator, Asian American Health Coalition dba HOPE Clinic; Margot Savoy, Chair, Department of Family and Community Medicine, Temple University Physicians; Congresswoman Allyson Schwartz, President and CEO, Better Medicare Alliance; and Tobin Van Ostern, Co-Founder, Young Invincibles Advisors; Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Provisions of this Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the January 15, 2020 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (November 14, 2019) meeting
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written

[2] Health Insurance Marketplace℠ and Marketplace℠ are service marks of the U.S. Department of Health & Human Services.

copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Authority: Sec. 1114(f) of the Social Security Act (42 U.S.C. 1314(f)), sec. 222 of the Public Health Service Act (42 U.S.C. 217a), and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR part 102–3).

Dated: December 19, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–28004 Filed 12–27–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Coparenting and Healthy Relationship and Marriage Education for Dads (New Collection)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation (OPRE) proposes to collect information as part of the Coparenting and Healthy Relationship and Marriage Education for Dads (CHaRMED) study. The purpose of the CHaRMED study is to better understand the services that fatherhood programs provide in the areas of Healthy Marriage and Relationship Education (HMRE) and coparenting to learn what strategies hold promise for promoting active engagement in these services.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection will examine how fatherhood programs include HMRE and coparenting content, the types of activities programs use to promote fathers' healthy romantic relationships and coparenting relationships, barriers to addressing healthy romantic relationships and coparenting in fatherhood programs, the relevance and success of addressing healthy romantic relationships and coparenting with fathers alone versus with couples or both parents, fathers' and coparents' reactions to this programming, curriculum developers' perspectives on the curricula used, and what types of partnerships fatherhood programs have with other agencies to promote fathers' healthy romantic relationships and coparenting. This information will be collected through semi-structured interviews with fatherhood program staff, community partners, fathers who are no longer participating in the programs, and curriculum developers; and through focus groups with current program participants (fathers) and coparents. This information will inform future efforts to promote healthy romantic relationships and coparenting through fatherhood programming.

Respondents: Federal and non-federal fatherhood program staff (*e.g.,* program directors and facilitators), community partners, fathers, coparents, and curriculum developers.

ANNUAL BURDEN ESTIMATES

Instrument	Total/annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Screener for selecting fatherhood programs for visits	28	1	6	168
Semi-structured interviews with program staff	48	1	2	96
Semi-structured interviews with partner organization staff	14	1	2	28
Semi-structured interviews with non-participating fathers	20	1	1.5	30
Focus groups with participating fathers	104	1	2	208
Focus groups with coparents	48	1	2	96
Discussions with curriculum developers	7	1	1	7
Demographic questionnaire -fathers	124	1	.25	31
Demographic questionnaire—coparents	48	1	.25	12

Estimated Total Annual Burden Hours: 676

Authority: Title IV, Part A, Section 403(a)(2) of the Social Security Act [42 U.S.C. 603(a)(2)].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–28108 Filed 12–27–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Provision of Child Support Services in IV–D Cases Under the Hague Child Support Convention; Federally-Approved Forms (OMB #0970–0488)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) is requesting a three-year extension of the Hague Child Support Forms (OMB #0970–0488, expiration 4/30/2020). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: On January 1, 2017, the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance entered into force for the United States. This multilateral Convention contains groundbreaking provisions that, on a worldwide scale, establish uniform, simple, fast, and inexpensive procedures for the processing of international child support cases. Under the Convention, U.S. states process child support cases with other countries that have ratified the Convention under the requirements of the Convention and Article 7 of the Uniform Interstate Family Support Act (UIFSA 2008). In order to comply with the Convention, the U.S. implements the Convention's case processing forms.

State and Federal law require states to use federally approved case processing forms. Section 311(b) of UIFSA 2008, which has been enacted by all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands, requires states to use forms mandated by Federal law. 45 CFR 303.7 also requires child support programs to use federally approved forms in intergovernmental IV–D cases unless a country has provided alternative forms as a part of its chapter in a Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.

Respondents: State agencies administering a child support program under title IV–D of the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Annex I: Transmittal form under Article 12(2)	54	45	1	2,430
Annex II: Acknowledgment form under Article 12(3)	54	90	.5	2,430
Annex A: Application for Recognition and Enforcement, including restricted information on the applicant	54	18	.5	486
Annex A: Abstract of Decision	54	4	1	216
Annex A: Statement of Enforceability of Decision	54	18	0.17	165
Annex A: Statement of Proper Notice	54	4	.5	108
Annex A: Status of Application Report—Article 12	54	36	.33	642
Annex B: Application for Enforcement of a Decision Made or Recognized in the Requested State, including restricted information on the applicant	54	18	.5	486

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Annex B: Status of Application Report—Article 12	54	36	.33	642
Annex C: Application for Establishment of a Decision, including restricted information on the Applicant	54	4	.5	108
Annex C: Status of Application Report—Article 12	54	9	.33	160
Annex D: Application for Modification of a Decision, including Restricted Information on the Applicant	54	4	.5	108
Annex D: Status of Application Report—Article 12	54	9	.33	160
Annex E: Financial Circumstances Form	54	45	2	4,860

Estimated Total Annual Burden Hours: 13,001.

Authority: 42 U.S.C. 654(20) and 666(f).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–28109 Filed 12–27–19; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Form ACF–196T, Tribal TANF Financial Report (OMB #0970–0345)

AGENCY: Office of Family Assistance; Administration for Children and Families; HHS.

ACTION: Request for public comment.

SUMMARY: Form ACF–196T is used by tribes to report expenditures for the Tribal Temporary Assistance for Needy Families (TANF) grant. The Administration for Children and Families (ACF) will use the financial data provided by tribes to estimate quarterly funding needs, calculate award amounts, and assess compliance with statutory and regulatory requirements. ACF is requesting an extension with no changes to the form and minor updates to the instructions.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193. Tribal entities with approved tribal plans for implementation of the TANF program are required under Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding federal expenditures. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected. 45 CFR part 286 Subpart E requires the strictest controls on funding requirements, which necessitates review of documentation in support of tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF Report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

Respondents: All approved Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Form	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
ACF–196T	72	4	1.5	432

Estimated Total Annual Burden Hours: 432.

Comments: In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: U.S.C. Section 402 of the Social Security Act (42 U.S.C. 602).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–28090 Filed 12–27–19; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; SHIP–SMP Survey of Group Outreach and Education Events, Formerly the ''Senior Medicare Program National Beneficiary Survey'', OMB #0985–0056

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This notice solicits comments on the Proposed Revision and solicits comments on the information collection requirements related to the ''National SHIP–SMP Beneficiary Survey of Group Outreach and Education Events''.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by February 28, 2020.

ADDRESSES: Submit electronic comments on the collection of information to: Sara Vogler. Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Sara Vogler.

FOR FURTHER INFORMATION CONTACT: Sara Vogler, Administration for Community Living, Washington, DC 20201, 202–795–7461, *Sara.Vogler@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including: (1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility; (2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The SHIP–SMP Survey of Group Outreach and Education Events is a survey of individuals who attend outreach and education events provided by the State Health Insurance Assistance Program (SHIP) or Senior Medicare Patrol (SMP). These events help Medicare beneficiaries understand their Medicare benefits and options. These events also increase the ability of beneficiaries to identify fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically.

The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options.

The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities enhance the financial, emotional, physical, and mental well-being of older adults, thereby increasing their capacity to maintain security in retirement and make better financial and healthcare choices.

SHIP–SMP grantees provide group outreach and education through presentation events, and this collection will survey the attendees of those events. The SHIP–SMP Survey of Group Outreach and Education Events will focus on group outreach and education events and the individuals who attend them, to determine if the target audience is satisfied with the information they are receiving. This is a renewal of the existing Senior Medicare Program National Beneficiary Survey, which received clearance on August 28, 2017, with ICR Reference Number 201702–0985–003 and OMB Control Number 0985–0056. That survey was conducted over a three-year period beginning on October 1, 2017, and will conclude on March 30, 2020. To date, the Senior Medicare Program National Beneficiary Survey has generated over 5000 responses, all of which were submitted anonymously and voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2018, 2019, and 2020. Reports developed for FY18 and FY19 participants have provided an overall measure of presentation attendee satisfaction and have provided insight into the relationship between presentation inputs (information provided, access to presentations) and overall satisfaction. The renewed survey will include both SHIP and SMP presentations and will survey every participating state and territory at least once each year.

To generate a sample with a 95% confidence level at the national level

400 responses will be required, which is based on over 500,000 group outreach and education event attendees in 2018. ACL will draw a representative sample of event attendees by surveying each of the 54 participating states and territories at least once. An average event surveyed in FY18 or FY19 generated 11 completed surveys, resulting in an estimated minimal collection of 600 responses.

In the first three years of the existing survey states and territories had the opportunity to exceed the minimum requirements, in order to collect a larger overall dataset for their state or territory. This opportunity will continue with the renewed survey. Assuming that an average state or territory collects 100 surveys per year, the maximum burden estimate is 5400 responses per year.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents (minimum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	600	1	5/60	50
Total	600	1	5/60	50

Respondent/data collection activity	Number of respondents (maximum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	5400	1	5/60	450
Total	5400	1	5/60	450

Dated: December 19, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–28104 Filed 12–27–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

[OMB# 0985–0040]

Agency Information Collection Activities; Proposed Collection; Public Comment Request; State Health Insurance Assistance Program (SHIP) Data Performance Reports and Information Collection Tools

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This is a revision request for the Office of Management and Budget (OMB) approval for the modification and use of the Data Performance Reports and Information Collection tools for the State Health Insurance Assistance Program (SHIP) under OMB 0985–0040 that expires March 31, 2020.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by February 28, 2020.

ADDRESSES: Submit electronic comments on the collection of information to: Office of Healthcare Information and Counseling, *OHIC@acl.hhs.gov,* the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Rebecca Kinney.

FOR FURTHER INFORMATION CONTACT: Rebecca Kinney, Office of Healthcare Information and Counseling (OHIC), Administration for Community Living, Washington, DC 20201, Phone: 202–795–7397, E-Mail: *Rebecca.Kinney@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques when appropriate, and other forms of information technology.

The purpose of this data collection is to collect performance data from grantees, grantee team members, and partners. Congress requires this data collection for program monitoring and Government Performance Results Act (GPRA) purposes. This data collection allows the Administration for Community Living (ACL) and the Center for Innovation and Partnership (CIP) to communicate with Congress and the public on the State Health Insurance

Assistance Program (SHIP), the Senior Medicare Patrol (SMP) program, the Medicare Improvements for Patients & Providers Act (MIPPA) program, and Aging and Disability Resource Centers (ADRC) activities. In addition to the SHIP Data Performance Reports and Information Collection (OMB #0985–0040), this revision incorporates the expired SMP Report collection (OMB #0985–0024) and the ADRC collection (OMB #0985–0062) into one tool.

The SHIP, SMP, MIPPA, and ADRC programs are located in each of the 50 states, the District of Columbia, Puerto Rico, Guam and the U.S. Virgin Islands. In order to ensure that grantees' report activity accurately and consistently it is imperative that these data collection tools remain active. The respondents for this data collection are grantees, grantee team members, and partners who meet with Medicare beneficiaries and older adults' in-group settings and in one-on-one sessions to educate them on the importance of being aware of Medicare fraud, error and abuse, and having the knowledge to protect the Medicare system.

ACL is proposing to combine these three collection tools to reduce burden on the grantees, grantee team members, and partners as many of the individuals working on these programs, collecting information, and reporting results are the same at the local level. Combining these tools will reduce the need for duplicate or triplicate reporting of activities in separate tools further reducing the time and effort in reporting outcomes and activities. In addition, this combination will allow for further clarification on when, where, and how activities are being conducted across these ACL programs further informing performance outcomes.

SHIP and MIPPA Data Collection (OMB #0985–0040)

Section 4360(f) of OBRA 1990 created the State Health Insurance Assistance Program (SHIP) and requires the Secretary to provide a series of reports to the U.S. Congress on the performance of the SHIP program annually. The law also requires ACL to report on the program's impact on beneficiaries and to obtain important feedback from beneficiaries.

This tool captures the information and data necessary for ACL to meet these Congressional requirements, as well as, capturing performance data on individual grantees providing ACL essential insight for monitoring and technical assistance purposes.

In addition, the Medicare Improvements for Patients and Providers Act (MIPPA), initially passed in 2008, provided targeted funding for the SHIPs, area agencies on aging (AAAs), and Aging and Disability Resource Centers (ADRC) to conduct enrollment assistance to Medicare beneficiaries for the Low Income Subsidy (LIS) and Medicare Savings Program (MSP). These activities, collectively known as the MIPPA Program, have been funded nearly annually through a series of funding or extenders bills. Most recently, the Consolidated Appropriations Act, 2018 extended funding for MIPPA to FY 2018 and FY 2019. This tool also collects performance and outcome data on the MIPPA Program providing ACL necessary information for monitoring and oversight.

SMP Data Collection (OMB #0985–0024)

Under Public Law 104–208, the Omnibus Consolidated Appropriations Act of 1997, Congress established the Senior Medicare Patrol Projects in order to further curb losses to the Medicare program. The Senate Committee noted that retired professionals, with appropriate training, could serve as educators and resources to assist Medicare beneficiaries and others to detect and report error, fraud and abuse. Among other requirements, it directed the Administration for Community Living to work with the Office of Inspector General (OIG) and the Government Accountability Office (GAO), to assess the performance of the program. The Administration for Community Living has worked with HHS/OIG to develop project-level performance measures.

The HHS/OIG has collected SMP performance data and issued SMP performance reports since 1997. The information from the current collection is reported by the OIG to Congress and the public. This information is also used by ACL as the primary method for monitoring the SMP Projects.

ADRC Data Collection (OMB #0985–0062)

The Aging and Disability Resource Center (ADRC) collects data for the No Wrong Door (NWD) System initiative. This tool is tethered to the ADRC program and seeks to connect fragmentation in the network and furthermore supports the need for early community-based interventions.

ACL uses this collection to support states in better coordinating and integrating their existing long-term services and supports (LTSS) access functions to develop a new interface that would make it easier for people to learn about and quickly access options that meet their needs. These programs operate throughout the United States and represent a nationally recognized network.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input*.

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows: The burden hours are based on the number of projects for ACL grantees.

Type of respondent	Form/report name	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
SMP Grantees	Media Outreach & Education	216	46	15	2,484
SMP Grantees	Group Outreach & Education	6,935	4	4	1,849.33
SMP Grantees	Individual Interaction	6,935	41	5	23,694.58
SMP Grantees	Team Member	216	31	5	558
SMP Grantees	OIG Report	0	0	0	0
SMP Grantees	Time Spent Report	0	0	0	0
SHIP/MIPPA Grantees	Media Outreach & Education	3,750	15	15	14,062.5
SHIP/MIPPA Grantees	Group Outreach & Education	3,750	15	4	3,750
SHIP/MIPPA Grantees	SHIP Team Member	216	75	5	1,350
SHIP/MIPPA Grantees	Beneficiary Contact	15,000	233	5	291,250
SHIP/MIPPA Grantees	Training	216	75	15	1,620
SHIP/MIPPA Grantees	SHIP Performance Report	0	0	0	0
SHIP/MIPPA Grantees	Resource Report	0	0	0	0
SHIP/MIPPA Grantees	MIPPA Performance Report	0	0	0	0

Type of respondent	Form/report name	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
ADRC/NWD	NWD Management Tool data collection and entry—Local Level.	556	2	60	112
ADRC/NWD	NWD Management Tool data collection and entry—State Level.	996	2	240	7,968
ADRC/NWD	NWD Management Tool data collection and entry—Local Level.	400	12	30	2,400
SHIP/SMP/MIPPA	Summary Reports	0	0	0	0
SHIP/MIPPA Grantees	Part D Enrollment outcomes Report	0	0	0	0
Totals		39,186	551	403	351,098

Dated: December 19, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–28105 Filed 12–27–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; SHIP–SMP Survey of One-on-One Assistance, Formerly the ''National Beneficiary Survey of State Health Insurance Assistance Program (SHIP)'', OMB #0985–0057

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

This notice solicits comments on the Proposed Revision and solicits comments on the information collection requirements related to the ''SHIP–SMP Survey of One-on-One Assistance''.

DATES: Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by February 28, 2020.

ADDRESSES: Submit electronic comments on the collection of information to: Sara Vogler. Submit written comments on the collection of information to Administration for Community Living, Washington, DC 20201, Attention: Sara Vogler.

FOR FURTHER INFORMATION CONTACT: Sara Vogler, Administration for Community Living, Washington, DC 20201, 202–795–7461, *Sara.Vogler@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, ACL invites comments on our burden estimates or any other aspect of this collection of information, including:

(1) Whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The SHIP–SMP Survey of One-on-One Assistance is a survey of individuals who meet with team members from the State Health Insurance Assistance Program (SHIP) or the Senior Medicare Patrol (SMP). These services help Medicare beneficiaries understand their Medicare benefits and options. These services also increase the ability of beneficiaries to identify and report fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically.

The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options. SHIP grantees provide free, in-depth, unbiased, one-on-one health insurance counseling and assistance to Medicare beneficiaries, their families, and caregivers.

The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities also serve to enhance the financial, emotional, physical, and mental well-being of older adults, thereby increasing their capacity to

maintain security in retirement and make better financial and healthcare choices. SMP team members provide one-on-one assistance, and when needed, serve as consumer advocates to resolve billing disputes/issues.

The SHIP–SMP Survey of One-on-One Assistance will gauge individuals' satisfaction with the services provided by SHIP and SMP team members. This survey is a renewal of the existing ''National Beneficiary Survey of State Health Insurance Assistance Program (SHIP)'', which received clearance on August 28, 2017, with ICR Reference Number 201702–0985–002 and OMB Control Number 0985–0057. That survey was conducted over a three-year period beginning on October 1, 2017, and will conclude on March 30, 2020. To date, this survey has generated over 2500 responses, all of which were submitted voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2018, 2019, and 2020. Reports developed for FY18 and FY19 participants have provided an overall measure of satisfaction with SHIP's one-on-one assistance services and have provided insight into the relationship between inputs (information provided, time between initial contact and services received) and overall satisfaction. The renewed collection will survey recipients of both SHIP and SMP one-on-one assistance but will not increase the number of surveys collected. The renewed survey will provide an annual collection at the national level, with an estimated collection of 800 responses per year. To generate a sample with a 95% confidence level at the national level 400 responses will be required from each program (n = 2,000,000 SHIP one-on-one assistance sessions in 2018; n = 275,000 SMP one-on-one assistance sessions in 2018).

ACL will draw a representative sample of customers who received assistance from each program by focusing only on non-redundant individuals (*i.e.,* a random sample without replacement of individuals who receive SHIP and/or SMP one-on-one assistance).

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	800	1	6/60	80
Total	800	1	6/60	80

Dated: December 19, 2019.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2019–28101 Filed 12–27–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5364]

Submission of Plans for Cigarette Packages and Cigarette Advertisements; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Submission of Plans for Cigarette Packages and Cigarette Advertisements.'' This guidance, when finalized, would assist those required to submit cigarette plans for cigarette packages and cigarette advertisements by providing recommendations related to those submissions, including information on what should be in a cigarette plan, who should submit a cigarette plan, and when to submit a cigarette plan.

DATES: Submit either electronic or written comments on the draft guidance by January 29, 2020.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5364 for ''Submission of Plans for Cigarette Packages and Cigarette Advertisements.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff office between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Lauren Belcher or Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 1–877–287–1373, email: *AskCTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Submission of Plans for Cigarette Packages and Cigarette Advertisements.'' The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was enacted on June 22, 2009, and granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products. The Tobacco Control Act also amended section 4 of the Federal Cigarette Labeling and Advertising Act (FCLAA) to direct FDA to issue regulations requiring each cigarette package and advertisement to bear a new textual warning label statement accompanied by color graphics depicting the negative health consequences of smoking (section 201 of the Tobacco Control Act). In enacting this legislation, Congress also provided that FDA may adjust the required warnings if FDA found that such a change would promote greater public understanding of the risks associated with the use of tobacco products (section 202 of the Tobacco Control Act). The Tobacco Control Act also modified the requirements of the FCLAA regarding the submission of cigarette plans for the random and equal display and distribution of required warnings on cigarette packaging and quarterly rotation of required warnings in cigarette advertising. It also requires that such cigarette plans be submitted to FDA for review and approval, rather than to the Federal Trade Commission.

FDA issued a proposed rule entitled ''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements'' on August 16, 2019 (84 FR 42754). The proposed rule, once finalized, would specify the color graphics that must accompany the new textual warning statements and establish marketing requirements for cigarette packages and advertisements. The marketing requirements would require, among other things, submission of a cigarette plan that provides for the random and equal display and distribution of the required warnings on cigarette packaging and quarterly rotation of the required warnings in cigarette advertising, as described under section 4 of FCLAA. This draft guidance provides recommendations related to preparing and submitting those cigarette plans.

II. Significance of Draft Guidance

FDA is issuing this draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA regarding the submission of cigarette plans for cigarette packages and advertisements. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance refers to proposed collections of information described in FDA's August 16, 2019, proposed rule on ''Tobacco Products; Required Warnings for Cigarette Packages and Advertisements'', which this draft guidance is intended to interpret. The proposed collections of information in the proposed rule are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). As required by the PRA, FDA has published an analysis of the information collection provisions of the proposed rule (84 FR 42754 at 42787) and has submitted them for OMB approval.

IV. Electronic Access

Persons with access to the internet may obtain an electronic version of the draft guidance at either *https://www.regulations.gov* or *https://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: December 20, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27991 Filed 12–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0804]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the

Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with medical device premarket notification (510(k)).

DATES: Submit either electronic or written comments on the collection of information by February 28, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before February 28, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–0804 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification—21 CFR Part 807, Subpart E OMB Control Number 0910–0120—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360(k)) and the implementing regulation under part 807 (21 CFR part 807, subpart E) require a person who intends to market a medical device to submit a 510(k) submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. Based on the information provided in the

notification, FDA must determine whether the new device is substantially equivalent to a legally marketed device, as defined in § 807.92(a)(3) (21 CFR 807.92(a)(3)). If the device is determined to be not substantially equivalent to a legally marketed device, it must have an approved premarket approval application (PMA), product development protocol, humanitarian device exemption (HDE), request for an evaluation of automatic class III designation (De Novo request), or be reclassified into class I or class II before being marketed (see OMB control numbers 0910–0231, 0910–0332, 0910–0844, and 0910–0138). FDA makes the final decision of whether a device is substantially equivalent or not substantially equivalent.

Section 807.81 states when a 510(k) is required. A 510(k) is required to be submitted by a person who is: (1) Introducing a device to the market for the first time; (2) introducing a device into commercial distribution for the first time by a person who is required to register; or (3) introducing or reintroducing a device that is significantly changed or modified in design, components, method of manufacturer, or the intended use that could affect the safety and effectiveness of the device. Section 807.87 lists the information required in each 510(k).

Form FDA 3514, a summary cover sheet form, assists respondents in categorizing administrative 510(k) information for submission to FDA. This form also assists respondents in categorizing information for other FDA medical device programs such as PMAs, investigational device exemptions, De Novo requests, HDEs, etc.

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the FD&C Act (21 U.S.C. 360d). Amended section 514 of the FD&C Act allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions including 510(k) or other requirements. FDA has published and updated regularly the list of recognized standards since enactment of FDAMA and has allowed 510(k) submitters to certify conformance to recognized standards to meet the requirements of § 807.87.

Under § 807.90(a)(3), inquiries regarding a 510(k) submission should be in writing and sent to one of the addresses in § 807.90(a).

Under § 807.87(h), each 510(k) submitter must include in the 510(k) either a summary of the information in the 510(k) as required by § 807.92 (510(k) summary) or a statement certifying that the submitter will make available upon request the information in the 510(k) with certain exceptions as per § 807.93 (510(k) statement).

Section 745A(b) of the FD&C Act, amended by section 207 of the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52), requires that submissions for devices under section 510(k), among other submission types, be submitted in electronic format specified by FDA. In addition, in the Medical Device User Fee Amendments of 2017 (MDUFA IV) Commitment Letter from the Secretary of Health and Human Services to Congress,[1] FDA committed to developing ''electronic submission templates that will serve as guided submission preparation tools for industry to improve submission consistency and enhance efficiency in the review process.'' The Electronic Submission Template and Resource (eSTAR) is such an electronic submission template for 510(k) submissions to facilitate the preparation of submissions in electronic format.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and 21 CFR part/section	Form number	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours [2]
510(k) submission (807 subpart E).	FDA 3881	3,800	1	3,800	79.25	301,150
Summary cover sheet (807.87).	FDA 3514	1,906	1	1,906	0.5	953
Status request (807.90(a)(3)).		1	1	1	0.25	1
510(k) summary (807.92)		2,725	1	2,725	4	10,900
510(k) statement (807.93)		215	1	215	10	2,150
510(k) submission (807 subpart E)—via eSTAR.	FDA 4062	100	1	100	40	4,000
eSTAR setup—(one-time burden).		80	1	80	0.08 (5 minutes)	6
Total						319,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers have been rounded.

Upon review of this information collection, we have made the following changes:

- We have updated the burden estimate consistent with new provisions in § 807.87(j) regarding ''Human Subject Protection; Acceptance of Data from Clinical Investigations for Medical Devices'' (83 FR 7366; February 21, 2018) (approved under OMB control number 0910–0741). Section 807.87 was amended to address requirements for 510(k) submissions supported by clinical data. For clinical investigations conducted in the United States, submitters are required to submit a statement as described in § 807.87(j)(1). For clinical investigations conducted outside the United States, submitters are required to submit the information as described in § 807.87(j)(2). Consistent with our estimate in OMB control number 0910–0741, this revision increases our burden estimate for a

[1] See 163 CONG. REC. S4729–S4736 (daily ed. August 2, 2017) (Food and Drug Administration User Fee Reauthorization), also available at *https://www.fda.gov/media/102699/download.*

510(k) submission by 15 minutes per submission.

• We corrected the burden table to include a line for the ''510(k) Summary'' under § 807.92. This section was inadvertently removed from the previous version of the information collection request (ICR).

• We are making available Form FDA 3881 ''Indications for Use'' that respondents include as part of a medical device 510(k). The information provided via the form is already approved under this ICR. The form does not ask for new information and does not bear on the underlying program or on the hour or cost burden associated with the information collection, rather it provides a fillable, 508-compliant format for respondents to use for the ''Indications for Use'' portion of their 510(k) submission.

• We updated the guidance ''Refuse to Accept Policy for 510(k)s'' to explicitly recommend providing an Acceptance Checklist in the 510(k) submission. The guidance previously provided the checklist as an example of a tool that FDA staff use when reviewing a 510(k) submission. While it was not explicitly recommended, respondents had used the example and had included it with their 510(k) submission. We believe the checklist can be a helpful tool for both reviewers and 510(k) submitters and have therefore updated the guidance to explicitly recommend inclusion of the checklist in the 510(k) submission. Because most submitters included the checklist on their own initiative and because it may simplify preparation of the 510(k), we do not believe adding the checklist to this ICR affects the overall burden for a 510(k) submission. Additionally, we have updated the checklist to include combination products, as appropriate. The estimated number of responses as updated with current data in this submission, reflects the inclusion of combination products.

• We revised and reformatted Form FDA 3514, ''CDRH Premarket Review Submission Cover Sheet,'' to improve usability and to be inclusive of most medical device product submission types. Form FDA 3514, a summary cover sheet form, assists respondents in categorizing 510(k) information for submission to FDA. This form also assists respondents in categorizing information for other FDA medical device programs. The total burden for Form FDA 3514 and for the 510(k) program is estimated in this ICR. The burden for the other medical device programs listed on Form FDA 3514 are approved under the corresponding product submission ICRs as follows: premarket approval applications (OMB control number 0910–0231), investigational device exemptions (OMB control number 0910–0078), humanitarian device exemptions (control number 0910–0332), CLIA waivers (OMB control number 0910–0598), Q-Submissions (OMB control number 0910–0756), De Novo requests (OMB control number 0910–0844), Emergency Use Authorizations (OMB control number 0910–0595), 513(g) requests (OMB control number 0910–0705); and Appeals (OMB control number 0910–0738).

• Certain revisions to Form FDA 3514, as previously described, eliminate the need for Form FDA 3654, ''Standards Data Report for 510(k)s.'' Additionally, the ability for Form FDA 3514 to be expandable for the number of standards cited will increase awareness of actual standards in a submission and how they were used on a single form (compared to including several Form FDA 3654 documents). In the rare occasions where the sponsor elects to not use Form FDA 3514 for standards, this would not have any effect on the review outcome, with regard to standards, as the form serves as a means to identify what standards are cited, how they are used, and where in the submission they are located.

• We have removed Form FDA 3541, ''Status Request.'' In practice, Form FDA 3541 is rarely used. We have adjusted the burden estimate to reflect this removal. Under § 807.90(a)(3), all inquiries regarding a premarket notification submission should be in writing and sent to one of the addresses listed in § 807.90(a).

• We have added burden estimates for the eSTAR and eSTAR setup (one-time burden). Under section 745A(b) of FD&C Act, amended by section 207 of FDARA (Pub. L. 115–52), and consistent with the MDUFA IV Commitment Letter, FDA has developed the eSTAR (eSTAR, Form FDA 4062) for 510(k) submissions to facilitate the preparation of submissions in electronic format. We expect to receive approximately 100 510(k) submissions via eSTAR per year. We estimate that eSTAR submissions will take approximately 40 hours per submission. Additionally, we've estimated a one-time setup burden of 5 minutes for approximately 80 new eSTAR users annually.

The adjustments and revisions previously mentioned have resulted in a 39,473-hour decrease in the total hour burden estimate since the last OMB approval.

Dated: December 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28098 Filed 12–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5743]

Importation of Certain Food and Drug Administration-Approved Human Prescription Drugs, Including Biological Products, Under Section 801(d)(1)(B) of the Federal Food, Drug, and Cosmetic Act; Draft Guidance for Industry; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects the Notice of Availability from the Food and Drug Administration (FDA, Agency, or we) announcing the availability of a draft guidance for industry entitled ''Importation of Certain FDA-Approved Human Prescription Drugs, Including Biological Products, under Section 801(d)(1)(B) of the Federal Food, Drug, and Cosmetic Act,'' which published in the **Federal Register** on Monday, December 23, 2019. This draft guidance describes procedures to obtain a National Drug Code (NDC) for an FDA-approved prescription drug that is imported into the United States in compliance with the Federal Food, Drug, and Cosmetic Act (FD&C Act), which would provide an additional avenue through which drugs could be sold at a lower cost in the U.S. market. This draft guidance is intended to address certain challenges in the private market faced by manufacturers seeking to sell their drugs at lower costs. The Notice was published with two omissions. This document corrects those omissions by republishing the Notice in its entirety to include the omitted language.

DATES: Submit either electronic or written comments on the draft guidance by February 21, 2020, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–5743 for ''Importation of Certain FDA-Approved Human Prescription Drugs, Including Biological Products, under Section 801(d)(1)(B) of the Federal Food, Drug, and Cosmetic Act.'' [1] Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lyndsay Hennessey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7605, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Importation of Certain FDA-Approved Human Prescription Drugs, Including Biological Products, under Section 801(d)(1)(B) of the Federal Food, Drug, and Cosmetic Act,'' which, when finalized, will represent the Agency's current thinking on the importation of multi-market approved (MMA) products. This draft guidance describes procedures to obtain an NDC for an FDA-approved prescription drug that is imported into the United States in compliance with section 801 of the FD&C Act (21 U.S.C. 381), which would provide an additional avenue through which drugs could be sold at a lower cost in the U.S. market. In recent years, FDA has become aware that some drug manufacturers may be interested in offering certain of their drugs at lower costs and that obtaining additional NDCs for these drugs may help them to address certain challenges in the private market. This guidance is not intended to address the applicability of the Medicaid drug rebate program for manufacturers, which may be addressed in further guidance from other components of HHS. This guidance is intended to outline a potential pathway by which manufacturers could obtain an additional NDC for an FDA-approved drug that was originally intended to be marketed in a foreign country. This guidance specifically addresses the importation of FDA-approved drugs that were also authorized for sale in a foreign country in which the drugs were originally intended to be marketed (''MMA product''). This guidance describes: (1) The process for submitting a supplement to an approved FDA application for an MMA product; (2) the recommended labeling for an MMA product; (3) the process for registration and listing and for obtaining an NDC for the MMA product; (4) the requirements of section 582 of the FD&C Act (21 U.S.C. 360eee–1) as added by the Drug Supply Chain Security Act (DSCSA) (Title II of Pub. L. 113–54); (5) recommendations related to procedures for importation of the MMA product; and (6) other FDA requirements applicable to MMA products.

This guidance, when finalized, will help ensure manufacturers are aware of

[1] In the **Federal Register** of December 23, 2019 (84 FR 70557), FDA issued a Notice of Availability for this guidance, the subject of this correction notice.

procedures to provide access to lower-cost drugs in the United States.[2] The guidance details procedures that will enable manufacturers to obtain an additional NDC for the MMA product, which could allow greater pricing flexibility for a drug or biological product. The additional NDC also will support pharmacovigilance, accurate billing and reimbursement, and facilitate clearance of the MMA products through customs. This draft guidance is not final nor is it in effect at this time.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the importation of MMA products. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Issues for Consideration

As previously noted, FDA is interested in receiving comments on the draft guidance. Regarding the approach set forth in the draft guidance, in addition to any other issues addressed, FDA requests that commenters consider the following issues when submitting comments:

1. Are there additional considerations for certain types of drug products with special handling, such as sterile injectables, drugs with boxed warnings, drugs with REMS (Risk Evaluation and Mitigation Strategy), controlled substances, or drugs that do not meet the definition of ''product'' under the DSCSA (21 U.S.C. 360eee(13))? Are there additional considerations for combination products related to the content of the guidance (*e.g.,* supplement, labeling, NDC) that would warrant additional guidance for use of this approach for those products? To the extent that interested parties believe that different or additional considerations from those described in the draft guidance should apply to such an approach for combination products, we are interested in input on that, as well.

2. The draft guidance uses ''MMA product'' to describe FDA-approved drugs that were originally intended to be marketed in a foreign country and also authorized for sale in that foreign country. Is this new term adequate and understandable? Is there another term that would provide more clarity regarding the products discussed in the guidance?

3. The draft guidance describes how an NDC could be obtained for MMA products. What is the effect of a manufacturer using a new labeler code as opposed to a new product code to distinguish these products, such as for reimbursement?

4. The draft guidance recommends a labeling statement in the FDA-approved labeling for the MMA product, including the carton and container label, to assist pharmacists and others in accurately identifying, dispensing, and billing for these products. FDA seeks comment on the specific wording that could be included in the statement to differentiate MMA products from other drugs that are not the subject of the guidance, if finalized, and to help ensure MMA products are easily identifiable to pharmacists and not confusing to patients. FDA also seeks comment on other types of distinguishing characteristics on the carton and container label that would further enable pharmacists to identify an MMA product and distinguish it from other packages of the FDA-approved drug, without confusing patients and consistent with other applicable requirements relating to carton and container labeling. Additionally, would other possible mechanisms, such as a Dear Healthcare Provider letter, provide further clarity and reduce confusion for pharmacists and other healthcare providers as well as patients?

5. We request comment about how much, on average, the labeling and packaging changes described in the draft guidance would cost drug manufacturers and repackagers or relabelers. Are there other ways to distinguish the appearance of an MMA product? We also request comment about alternative labeling approaches that would display the required information with equal prominence but may result in lower costs.

6. The draft guidance describes procedures for manufacturers of drug products approved under new drug applications or biologics license applications to obtain an additional NDC for an MMA product. FDA is interested as to whether manufacturers of generic drugs approved under an abbreviated new drug application confront similar pricing issues such that it would be appropriate to provide guidance on a similar approach for generic drugs. To the extent that interested parties believe that different considerations should apply to such an approach for generic drugs from those described in the draft guidance, input is requested on that as well.

7. There are complex considerations that impact biosimilar development, market entry, and uptake. We are interested in the possible impacts of MMA products that are biological products on biosimilar development, market entry, and uptake.

8. Similarly, there are complex considerations impacting generic drug market entry. We are interested in the possible impacts of MMA products on generic drug development and market entry.

9. Are there voluntary steps a manufacturer may take in addition to the requirements in the DSCSA to ensure the security of the supply chain for products imported pursuant to the guidance?

10. Are there any potential risks associated with the importation of products as described in the draft guidance that could be addressed by a rulemaking? For example, to what extent, if any, are there additional procedures that might better protect against entities seeking to introduce counterfeit drugs in the United States? If so, please be specific about the potential risk and how it could be addressed through rulemaking.

11. The draft guidance describes a pathway that manufacturers could use to offer their products to Americans at a lower price. FDA is interested in the factors that could contribute to the decision to use this pathway and whether there are reasons to use this pathway other than the ability to sell products at a lower price.

III. Paperwork Reduction Act of 1995

FDA has tentatively concluded that there are no new collections of information in this draft guidance. This draft guidance refers to previously approved collections of information found in the FD&C Act and FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In accordance with the Paperwork Reduction Act, if FDA's tentative conclusion changes, prior to publication of any final guidance document FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to those previously approved collections of information found in FDA regulations or guidances.

[2] In the **Federal Register** of December 23, 2019 (84 FR 70796), FDA issued a Notice of Proposed Rulemaking under 21 U.S.C. 384 to offer a pathway for importation of drugs from Canada without the authorization of the manufacturer.

The collections of information in 21 CFR part 314 (new drug applications) have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 (biologics license applications) have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 207 (domestic and foreign facility registration, including assignment of an NDC) have been approved under OMB control number 0910–0045; the collections of information in 21 CFR part 1 (general enforcement regulations) have been approved under OMB control number 0910–0046; the collections of information in 21 CFR part 201 (labeling) have been approved under OMB control number 0910–0572; the collections of information pertaining to current good manufacturing practice requirements for finished pharmaceuticals and combination products under 21 CFR parts 4, 210, 211, 610, and 680 have been approved under OMB control numbers 0910–0139 and 0910–0834; and the collections of information pertaining to suspect product identification and notification under section 582 of the FD&C Act have been approved under OMB control number 0910–0806.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: December 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28141 Filed 12–27–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Collaborative Partnerships in Cancer Research P20.

Date: February 25, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W606, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–10: SBIR Contract Review Meeting.

Date: February 26, 2020.

Time: 11:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W032, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W116, National Cancer Institute, Rockville, MD 20892–9750, 240–276–5413, *klaus.piontek@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Validation of Cancer Markers (UH2/UH3).

Date: February 26, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–5122, *hasan.siddiqui@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Utilizing the PLCO Biospecimens Resources (U01).

Date: February 27, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–8329, 240–276–6343, *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Predoc to Postdoc Fellow Transition Award (F99/K00).

Date: March 3–4, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

Contact Person: Scott A. Chen, Ph.D., Scientific Review Officer, National Cancer Institute, 9609 Medical Center Drive, RM 7W604, Rockville, MD 20850, 240–276–6038, *chensc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Research Specialist Award (R50).

Date: March 5, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W242, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Zhiqiang Zou, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W242, Bethesda, MD 20892, 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1: NCI Clinical and Translational R21 and Omnibus R03.

Date: March 16, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W606, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 23, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28151 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Exploratory Alzheimer's Disease Research Centers Evaluation.

Date: January 31, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Marmoset Model U34 Review.

Date: February 18, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–480–1266, *neuhuber@ninds.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Microbiome and Aging Meeting.

Date: February 28, 2020.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, Conference Room, Admiral Ballroom, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 20, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28155 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel—BRAIN Initiative: New Concepts and Early-Stage Research for Large-Scale Recording and Modulation in the Nervous System (R21).

Date: January 23, 2020.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute 6700B Rockledge Drive Bethesda, MD 20818 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Acting Review Chief, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Dr., Ste. 3400, Rockville, MD 20892, (301) 451–2020, *hoshawb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: December 20, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28152 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Post-Award Reporting Requirements Including Research Performance Progress Report Collection (OD/OPERA)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia P. Currie, Project Clearance Branch, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 803–C, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or email your request, including your address to: *projectclearancebranch@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 12, 2019, Volume 84, No. 71 pages 14958–14959 and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director, NIH, may not conduct or

sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act (PRA) of 1995, the NIH has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Public Health Service (PHS) Post-award Reporting Requirements Revision, OMB 0925–0002, Expiration Date 3/31/2020, Office of the Director (OD), National Institutes of Health (NIH). This collection represents eliminating the Final Progress Report form as the form has been incorporated into the Final RPPR. Competing applications in the future may be updated to reflect related Human Fetal Tissue (HFT) information.

Need and Use of Information Collection: The RPPR is required to be used by all NIH, Food and Drug Administration, Centers for Disease Control and Prevention, and Agency for Healthcare Research and Quality (AHRQ) grantees. Interim progress reports are required to continue support of a PHS grant for each budget year within a competitive segment. The phased transition to the RPPR required the maintenance of dual reporting processes for a period of time. Continued use of the PHS Non-competing Continuation Progress Report (PHS 2590), exists for a small group of grantees. This collection also includes other PHS post-award reporting requirements: PHS 416–7 NRSA Termination Notice, PHS 2271 Statement of Appointment, 6031–1 NRSA Annual Payback Activities Certification, HHS 568 Final Invention Statement and Certification, iEdison, and PHS 3734 Statement Relinquishing Interests and Rights in a PHS Research Grant. The PHS 416–7, 2271, and 6031–1 are used by NRSA recipients to activate, terminate, and provide for payback of a NRSA. Closeout of an award requires a Final Invention Statement (HHS 568) and Final Progress Report. iEdison allows grantees and Federal agencies to meet statutory requirements for reporting inventions and patents. The PHS 3734 serves as the official record of grantee relinquishment of a PHS award when an award is transferred from one grantee institution to another. Pre-award reporting requirements are simultaneously consolidated under 0925–0001 and the changes to the collection here are related. Clinical trials are complex and challenging research activities. Oversight systems and tools are critical for NIH to ensure participant safety, data integrity, and accountability of the use of public funds. NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information in the PHS applications and pre-award reporting requirements as well as continued monitoring and update during the post-award reporting requirements will facilitate NIH's oversight of clinical trials. In addition, some of the data reported in the RPPR will ultimately be accessible to investigators to update certain sections of forms when registering or reporting their trials with ClinicalTrials.gov.

Frequency of response: Applicants may submit applications for published receipt dates. For NRSA awards, fellowships are activated, and trainees appointed.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 517,408.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Reporting				
PHS 416–7	12,580	1	30/60	6,290
PHS 6031–1	1,778	1	20/60	593
PHS 568	11,180	1	5/60	932
iEdison	5,697	1	15/60	1,424
PHS 2271	22,035	1	15/60	5,509
PHS 2590	243	1	18	4,374
RPPR—Core Data	32,098	1	8	256,784
Biosketch (Part of RPPR)	2,544	1	2	5,088
Data Tables (Part of RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of RPPR, includes inclusion enrollment report)	6,420	1	4	25,680
Publication Reporting	97,023	3	5/60	8,085
Final RPPR—Core Data	18,000	1	10	180,000
Data Tables (Part of Final RPPR)	758	1	4	3,032
Trainee Diversity Report (Part of Final RPPR)	480	1	15/60	120
PHS Human Subjects and Clinical Trial Information (Part of Final RPPR, includes inclusion/enrollment)	3,600	1	4	14,400
PHS 374	479	1	30/60	240
SBIR/STTR Phase II Final Progress Report	1,330	1	1	1,330
SBIR/STTR Life Cycle Certification	1,500	1	15/60	375
Total		218,983		517,408

Dated: December 20, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019–28130 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Task Force on Research Specific to Pregnant Women and Lactating Women.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Task Force on Research Specific to Pregnant Women and Lactating Women.

Date: February 3, 2020.

Time: 8:30 a.m. to 4:45 p.m.

Agenda: The Task Force is charged with providing advice and guidance to the Secretary of HHS, regarding Federal activities related to identifying and addressing gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities.

8:00 a.m. Registration

8:30 a.m.–4:45 p.m. Open Session

Place: NICHD Offices, Multipurpose Room 1425/1427 (1st Floor), 6710B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Lisa Kaeser, Executive Secretary, Office of Legislation and Public Policy, Eunice Kennedy Shriver, National Institute of Child Health and Human Development, Bethesda, MD 20892, (301) 496–0536, *kaeserl@mail.nih.gov*.

Public comments are welcome either by filing written comments in advance and/or providing oral comments at the meeting. Written comments to be included at the meeting should be sent to Lisa Kaeser by 5:00 p.m. on Friday, January 24, 2020. Brief oral comments from the public may occur during the discussion periods following each of the four working group presentations.

In the interest of security, NIH has instituted stringent procedures for entrance onto NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Details and additional information about this meeting, prior meetings, and the Task Force's 2018 Report and Recommendations can be found at the NICHD website for the Task Force on Research Specific to Pregnant Women and Lactating Women (PRGLAC): *https://www.nichd.nih.gov/about/advisory/PRGLAC/Pages/index.aspx* Presentations made during the meeting and any written comments will be formatted to be posted on the PRGLAC website for the record.

Registration Link: http://tiny.cc/PRGLAC0220.

Please note: This meeting will be available through NIH Videocast. If you are planning on watching the videocast remotely, please select this option on the registration form.

Dated: December 23, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28156 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request PHS Applications and Pre-Award Reporting Requirements (OD/OPERA)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia P. Currie, Project Clearance Branch, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 803–C, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or email your request, including your address to: *projectclearancebranch@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 12, 2019, Volume 84, No.212 pages 14956–14957 and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director, NIH, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the NIH has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Public Health Service (PHS) Applications and Pre-award Reporting Requirements. Revision, OMB 0925–0001, Expiration Date 3/31/2020. Form numbers: PHS 398, PHS416–1, 416–5, and PHS 6031. This collection represents a consolidation of PHS applications and pre-award reporting requirements into a revised data collection under the PRA. This collection includes the proposed use of a new PHS Human Subjects and Clinical Trial Information form.

Need and Use of Information Collection: NIH has received approval to require applicants and recipients to address Human Fetal Tissue requirements within the SF–424 R&R and the Research Performance Progress Report due to Congressional ((Sections 498A and 498B of the PHS Act (42 U.S.C. 289g–1 and 289g–2)) and Department of Health and Human Services (45 CFR 46.204 and 46.206) mandates regarding human fetal tissue research. Applicants and recipients will be required to comply with Federal and state laws concerning the acquisition of human fetal tissue (including cell lines) obtained from elective abortions as well as include a description of the proposed characteristics of the human fetal cells/tissue outlining the procurement budget details, and how the applicants/recipients will document the processes for how they will use the human fetal tissues and cells. Additionally, this revision will clarify information regarding an institutional commitment to ensuring that proper policies, procedures, and oversight are in place to

prevent discriminatory harassment and other discriminatory practices.

This collection also continues to include PHS applications and pre-award reporting requirements: PHS 398 (paper) Public Health Service Grant Application forms and instructions; PHS 398 (electronic) PHS Grant Application component forms and agency specific instructions used in combination with the SF424 (R&R); PHS Fellowship Supplemental Form and agency specific instructions used in combination with the SF424 (R&R) forms/instructions for Fellowships [electronic]; PHS 416–1 Ruth L. Kirschstein National Research Service Award (NRSA) Individual Fellowship Application Instructions and Forms used only for a change of sponsoring institution application (paper); Instructions for a Change of Sponsoring Institution for NRSA Fellowships (F30, F31, F32 and F33) and non-NRSA Fellowships; PHS 416–5 Ruth L. Kirschstein National Research Service Award Individual Fellowship Activation Notice; and PHS 6031 Payback Agreement. The PHS 398 (paper and electronic), PHS 416–1, 416–5, and PHS 6031 are currently approved under 0925–0001. All forms expire 10/31/2018. Post-award reporting requirements are simultaneously consolidated under 0925–0002, and include the Research Performance Progress Report (RPPR). The PHS 398 and SF424 applications are used by applicants to request federal assistance funds for traditional investigator-initiated research projects and to request access to databases and other PHS resources. The PHS 416–1 is used only for a change of sponsoring institution application. PHS Fellowship Supplemental Form and agency specific instructions is used in combination with the SF424 (R&R) forms/instructions for Fellowships and is used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The PHS 416–5 is used by individuals to indicate the start of their NRSA awards. The PHS 6031 Payback Agreement is used by individuals at the time of activation to certify agreement to fulfill the payback provisions. The Venture Capital Operating Companies (VCOC) Certification and the Small Business Innovation Research and Small Business Technology Transfer (SBIR/STTR) Funding Agreement Certifications are used by small business applicants. Oversight systems and tools are critical for the NIH to ensure participant safety, data integrity, and accountability of the use of public funds. The NIH has been engaged in a multi-year effort to examine how clinical trials are supported and the level of oversight needed. The collection of more structured information about proposed clinical trials in the PHS applications and pre-award reporting requirements will facilitate the NIH's oversight of clinical trials as well as assist in understanding where needs in the NIH research portfolio may exist. In addition, some of the data collected here will ultimately be accessible to investigators to pre-populate certain sections of forms when registering their trials with *ClinicalTrials.gov*.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,150,389.

ESTIMATED ANNUALIZED BURDEN HOURS

Information collection forms	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
PHS 398—Paper	4,247	1	35	148,645
PHS 398/424—Electronic:				
PHS Assignment Request Form	37,120	1	30/60	18,560
PHS 398 Cover Page Supplement	74,239	1	1	74,239
PHS 398 Modular Budget	56,693	1	1	56,693
PHS 398 Training Budget	1,122	1	2	2,244
PHS 398 Training Subaward Budget Attachment(s) Form	561	1	90/60	842
PHS 398 Research Plan	70,866	1	10	708,660
PHS 398 Research Training Program Plan	1,122	1	10	11,220
Data Tables	1,515	1	4	6,060
PHS 398 Career Development Award Supplemental Form	2,251	1	10	22,510
PHS Human Subjects and Clinical Trial Information (includes inclusion enrollment report)	54,838	1	14	767,732
Biosketch (424 Electronic)	80,946	1	2	161,892
PHS Fellowship—Electronic:				
PHS Fellowship Supplemental Form (includes F reference letters)	6,707	1	12.5	83,838
PHS Assignment Request Form	3,354	1	30/60	1,677
PHS Human Subjects and Clinical Trial Information (includes inclusion enrollment report)	5,030	1	14	70,420
Biosketch (Fellowship)	6,707	1	2	13,414
416–1	29	1	10	290
PHS 416–5	6,707	1	5/60	559
PHS 6031	6,217	1	5/60	518
VCOC Certification	6	1	5/60	1
SBIR/STTR Funding Agreement Certification	1,500	1	15/60	375
Total		421,777		2,150,389

Dated: December 19, 2019.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2019–28129 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: The Development of Autologous Kita-Kyushu Lung Cancer Antigen 1 (KK–LC–1) T Cell Receptor (TCR) for the Treatment of KK–LC–1 Expressing Human Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to T-Cure Biosciences, Inc. (T-Cure), located in Sherman Oaks, California.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before January 14, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Abritee Dhal, Ph.D., Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 3W610 MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702, Telephone: (240) 276–6154; Facsimile: (240) 276–5504; Email: *abritee.dhal@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

U.S. Provisional Patent Application 62/327,529 entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–US–01], PCT Patent Application PCT/US2017/027865 entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–PCT–02], Australian Patent Application 2017258745 entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–AU–03], Canadian Patent Application 3021898 entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–CA–04], European Patent Application 1733120.4 entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–EP–05], United States Patent Application 16/096,118, entitled ''Anti-KK–LC–1 T Cell Receptors'' [HHS Ref. E–153–2016–0–US–06], and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to:

The development, manufacture and commercialization of autologous (meaning one individual is both the donor and the recipient), peripheral blood T cell therapy products engineered by retrovirus (including lentivirus) to express T cell receptors (TCR) reactive to Kita-Kyushu Lung Cancer Antigen 1 (KK–LC–1) wherein the TCR has:

1. A single antigen specificity; and

2. a binding domain with complementary determining region (CDR) sequences of CASSLGTGGYNEQFF (beta chain) and CAGQLVYGNKLVF (alpha chain); for the treatment of KK–LC–1 expressing cancers.

This technology discloses TCRs that are specific for the cell surface domain of KK–LC–1. The TCRs can potentially be used for the treatment of triple negative breast cancer, gastric cancer, and lung cancer. In the subject situation, the TCRs can lead to the selective destruction of the cancerous cells.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 19, 2019.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2019–28150 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Transcatheter Trileaflet Tricuspid Suture Repair System—Phase II.

Date: January 21, 2020.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH RKL II, 6701 Rockledge Drive, Bethesda, MD 21892 (Telephone Conference Call).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 23, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28153 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Neutrophil Lineage in Inflammation.

Date: February 10, 2020.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott at Reagan National Airport, 1999 Richmond Highway, Arlington, VA 22202.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 23, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28154 Filed 12–27–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

HHS-Certified Laboratories Certified to Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438, (Formerly: STERLING Reference Laboratories)

Desert Tox, LLC, 10221 North 32nd Street, Suite J, Phoenix, AZ 85028, 602–457–5411

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2019–28149 Filed 12–27–19; 8:45 am]

BILLING CODE 4162–20–P

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

DEPARTMENT OF HOMELAND SECURITY

Technical Resource for Incident Prevention (TRIPwire) User Registration and Questionnaire

AGENCY: Infrastructure Security Division (ISD), Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; revision, 1670–0028.

SUMMARY: DHS CISA ISD will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this ICR for a 60-day public comment period. No comments were received by CISA. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are due by January 29, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to the OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.* All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1670–0028.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public

notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Dennis Molloy, 703–235–9388, *dennis.molloy@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA ISD Office of Bombing Prevention (OBP) has a leading role in implementation of the national counter-IED policy, articulated through Presidential Policy Directive 17 (PPD–17) Countering IEDs), serving as the Deputy Administrator of the federal interagency Joint Program Office for Countering Improvised Explosive Devices (JPO C–IED) and working in close collaboration with the White House National Security Council. The JPO C–IED coordinates and tracks Federal government progress in building national counter-IED capabilities. OBP also leads the DHS in implementation of the national counter-IED policy, serving as the DHS Counter-IED Program Management Office and chairing the DHS IED Working Group.

OBP is instrumental in aligning DHS and national counter-IED efforts through centralized and effective coordination of ongoing programs with national policy and strategy goals, resulting in better resource allocation within OBP and across DHS and our Federal, state, local, tribal, territorial and private sector partners.

TRIPwire (Technical Resource for Incident Prevention) is the DHS online, collaborative information-sharing network for bomb technicians, first responders, military personnel, government officials, intelligence analysts, and select private sector security professionals to increase awareness of evolving IED tactics, techniques, and procedures, as well as incident lessons learned and counter-IED preparedness information.

Users from Federal, State, local, and tribal government entities, as well as business and/or other for-profit industries, can elect to register for TRIPwire access. The TRIPwire portal contains sensitive information related to terrorist use of explosives and therefore user information is needed to verify eligibility and access to the system.

There are three main instruments within this collection: TRIPwire User Registrations, TRIPwire Revalidations, and TRIPwire Questionnaire. The information collected during the TRIPwire user registration process is reviewed electronically by the OBP to validate the user's ''need to know,'' which determines their eligibility for and access to TRIPwire. OBP verifies users need for access by confirming that a valid email address is used to register and checking employment references.

Annually, users are revalidated based on the information provided during their registration. For revalidation, users and employment references receive a system generated email to validate that access is still required and their information is still accurate.

OBP sends registered users a quarterly questionnaire seeking feedback as to how registrants use TRIPwire information, products, and tools. OBP uses the information collected during a quarterly questionnaire to review and improve the effectiveness and adequacy of the TRIPwire content and system features.

TRIPwire registration is user-driven and is completed electronically via the secure TRIPwire interface. Users are required to have a computer and access to the internet. The registration process requires users to provide their full name, assignment, citizenship, job title, employer name, professional address and contact information, as well as an Employment Verification Contact and their contact information. Notifications regarding the user registration are handled via electronic submission responses and/or email. In addition to electronic registration, TRIPwire uses automated notifications to registered users when/if their account or password is set to expire as well as annual re-verification of users' need for access to TRIPwire.

The TRIPwire Questionnaire is also collected electronically via a Survey Monkey link that is emailed to respondents. The Survey Monkey settings selected ensure that submissions are anonymous, and that an IP address is not collected.

The changes to the collection since the previous OMB approval include: updating the collection title, updating the TRIPwire User registration page, clarifying the revalidation burden, and adding a TRIPwire Questionnaire. Overall, these changes result in a decrease in burden estimates and costs.

This is a revision and renewal of an information collection.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Technical Resource for Incident Prevention (TRIPwire) User Registration and Questionnaire.

OMB Control Number: 1670–0028.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments and Private Sector Individuals.

Number of Annualized Respondents: 4,333.

Estimated Time per Respondent: 0.17 hours, 0.017 hours, 0.083 hours.

Total Annualized Burden Hours: 422 hours.

Total Annualized Respondent Opportunity Cost: $13,736.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $7,447.

Evette Maynard-Noel,

Deputy Chief Information Security Officer.

[FR Doc. 2019–28133 Filed 12–27–19; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2019–0107; FXES11130300000–201–FF03E00000]

Draft Environmental Assessment and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit, Blue Creek Wind Farm, Van Wert and Paulding Counties, Ohio

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from Blue Creek Wind Farm, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended, for its Blue Creek Wind Farm project. If approved, the ITP would authorize the incidental take of the Indiana bat and the northern long-eared bat. The applicant has prepared a draft habitat conservation plan (HCP), which is available for public review. We also announce the availability of a draft

environmental assessment, which has been prepared in accordance with the requirements of the National Environmental Policy Act. We request public comment on the application and associated documents.

DATES: We will accept comments received or postmarked on or before January 29, 2020.

ADDRESSES: *Obtaining documents:* Electronic copies of the documents this notice announces will be available online in Docket No. FWS–R3–ES–2019–0107 at *http://www.regulations.gov.* Public comments will also be available online at *http://www.regulations.gov.*

Paper copies of the documents this notice announces will be available at the following libraries: Brumback Library, 215 W. Main St., Van Wert, OH 45891; and Paulding County Carnegie Library, 205 S. Main St., Paulding, OH 45879.

Submitting comments: Please specify whether your comment addresses the draft HCP, DEA, or any combination of the aforementioned documents, or other supporting documents. Please submit written comments by one of the following methods:

- *Online: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2019–0107.
- *By hard copy:* Submit comments by U.S. mail or hand delivery to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2019–0107; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: JAO/lN; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Megan Seymour, Wildlife Biologist, or Patrice Ashfield, Ohio Ecological Services Office Project Leader, via phone at 614–416–8993, via the Federal Relay Service at 800–877–8339, or via U.S. mail at the U.S. Fish and Wildlife Service, Ohio Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Blue Creek Wind Farm, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). If approved, the ITP would be for a 35-year period and would authorize incidental take of the endangered Indiana bat (*Myotis sodalis*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

The applicant has prepared a draft habitat conservation plan (HCP), which covers the operation of the Blue Creek Wind Farm (project). The project consists of a wind-powered electric generation facility located in an approximately 40,426-acre area in Paulding and Van Wert Counties, Ohio. The draft HCP describes the following:

1. Permit duration;
2. Covered lands;
3. Covered species;
4. Project description and covered activities;
5. Environmental baseline and affected species;
6. Impact assessment and take authorization request for Indiana bats and northern long-eared bats;
7. Conservation plan, which includes the Biological Goals and Objectives, and measures to avoid, minimize, and mitigate the impact of the taking;
8. Monitoring and adaptive management;
9. Funding assurances;
10. Alternatives to the taking; and
11. Changed and unforeseen circumstances.

Under the National Environmental Policy Act (NEPA; 43 U.S.C. 4321 *et seq.*) and the ESA, the Service announces that we have gathered the information necessary to:

1. Determine the impacts and formulate alternatives for an EA related to:

a. Issuance of an ITP to the applicant for the take of the Indiana bat and the northern long-eared bat, and

b. Implementation of the associated HCP; and

2. Evaluate the application for ITP issuance, including the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of the Indiana bat and the northern long-eared bat.

Background

The Blue Creek project includes 152 operating 2.0-megawatt (MW) Gamesa G90 wind turbines with a total energy generating capacity of 304 MW. The project achieved commercial operation in June 2012. The need for the proposed action (*i.e.,* issuance of an ITP) is based on the potential that operation of the Blue Creek Wind Farm could result in take of Indiana bats and northern long-eared bats.

The HCP provides a detailed conservation plan to ensure that the incidental take caused by the operation of the project will not appreciably reduce the likelihood of the survival and recovery of the Indiana bat and northern long-eared bat, and provides mitigation to fully offset the impact of the taking. Further, the HCP provides a long-term monitoring and adaptive management strategy to ensure that the ITP terms are satisfied, and to account for changed and unforeseen circumstances.

Purpose and Need for Action

In accordance with NEPA, the Service has prepared a draft environmental assessment (DEA) to analyze the impacts to the human environment that would occur if the requested ITP were issued and the associated HCP were implemented.

Proposed Action

Section 9 of the ESA prohibits the ''taking'' of threatened and endangered species. However, provided certain criteria are met, the Service is authorized to issue permits under section 10(a)(1)(B) of the ESA for take of federally listed species when, among other things, such a taking is incidental to, and not the purpose of, otherwise lawful activities. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our implementing regulations in title 50 of the Code of Federal Regulations define ''harm'' as an act which actually kills or injures wildlife, and such act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The HCP analyzes, and the ITP would authorize, take from killing of bats due to the operation of the Blue Creek project. If issued, the ITP would authorize incidental take consistent with the applicant's HCP and the ITP. To issue the ITP, the Service must find that the application, including its HCP, satisfies the criteria of section 10(a)(1)(B) of the ESA and the Service's implementing regulations at 50 CFR part 13 and § 17.22. If the ITP is issued, the applicant would receive assurances under the Service's No Surprises policy, as codified at 50 CFR 17.22(b)(5).

The applicant proposes to operate a maximum of 152 wind turbines and associated facilities for a period of 35 years in Paulding and Van Wert Counties, Ohio. The project consists of wind turbines, associated gravel pads and access roads, underground and aboveground electrical collection circuits, two substations, two permanent un-guyed meteorological towers, and an Operations and Maintenance Facility consisting of an approximately 5,000-square-foot building.

The draft HCP describes the impacts of take associated with the operation of the Blue Creek Wind Farm and includes measures to avoid, minimize, mitigate, and monitor the impacts of incidental

take on the Indiana bat and the northern long-eared bat. The applicant will mitigate for take and associated impacts through one or more methods including restoration, if necessary, and permanent protection of documented maternity colony habitat and/or swarming habitat, and/or gating of a hibernaculum within the State of Ohio. Habitat mitigation, including any restored habitat, will occur on private land and be permanently protected by a conservation easement, fee simple acquisition with deed restrictions, or another site protection instrument that provides an equivalent level of protection, and will be approved by the Service. Chapter 5 of the HCP describes the Conservation Plan, including details of avoidance and minimization measures and compensatory mitigation that will limit and mitigate for the take of Indiana bats and northern long-eared bats. Chapter 6 of the HCP describes Monitoring and Adaptive Management to ensure take stays within permitted levels and mitigation sites are maintained as suitable habitat for the Indiana bat and northern long-eared bat.

The Service is soliciting information regarding the adequacy of the HCP to avoid, minimize, mitigate, and monitor the proposed incidental take of the covered species and to provide for adaptive management. In compliance with section 10(c) of the ESA (16 U.S.C. 1539(c)), the Service is making the ITP application materials available for public review and comment as described above.

We invite comments and suggestions from all interested parties on the draft documents associated with the ITP application (HCP and HCP Appendices), and request that comments be as specific as possible. In particular, we request information and comments on the following topics:

1. Whether adaptive management, mitigation, and monitoring provisions in the proposed action alternative are sufficient;
2. Any threats to the Indiana bat and the northern long-eared bat that may influence their populations over the life of the ITP that are not addressed in the draft HCP or DEA;
3. Any new information on white-nose syndrome effects on the Indiana bat and the northern long-eared bat; and
4. Any other information pertinent to evaluating the effects of the proposed action on the Indiana bat and the northern long-eared bat.

Alternatives in the Draft EA

The DEA contains an analysis of four alternatives: (1) No Action alternative, in which the Service would not issue a permit to the applicant, and the project turbines would be feathered until wind speeds reach 6.9 m/s from a half-hour before sunset to a half-hour after sunrise during the entirety of the fall migration season (August 1 through October 31) and spring migration season (March 15 through May 15), under which conditions take of listed species is unlikely to occur; (2) the Applicant's Proposed Project alternative in which the Service would issue an ITP to authorize incidental take of Covered Species associated with the project's operations as described in the applicant's HCP. In this alternative, the project turbines would be feathered until wind speeds reach 3.0 m/s during the spring migration season and summer (April 1 through July 31) from a half-hour before sunset to a half-hour after sunrise, and during the fall migration season (August 1 through October 15) project turbines would be feathered until wind speeds reach 5.0 m/s when temperatures are greater than 10 degrees Celsius (°C), from a half-hour before sunset to a half-hour after sunrise. In this alternative, the applicant estimated take of Indiana and northern long-eared bats using an approach that addresses inherent uncertainty in take estimates by incorporating a 70 percent confidence bound around the mean estimate, and a 30 percent reduction in take from application of the proposed cut-in speed regime. Under this alternative, 4.39 Indiana bats per year, for a total of 154 Indiana bats over the 35-year permit term, and take of 2.96 northern long-eared bats per year, for a total of 103 northern long-eared bats over the 35-year permit term, would be permitted. To be consistent and comparable in our analysis of all NEPA alternatives, the Service used a simplified method to estimate take across this and all other alternatives, which generated a take estimate for this alternative of 2.5 Indiana bats per year, for a total of 87.5 Indiana bats over the permit term, and take of 1.6 northern long-eared bats per year, for a total of 57.7 northern long-eared bats over the permit term; (3) More Restrictive Operations alternative, in which the Service would issue an ITP for the HCP, but turbine operations would be different than the Applicant's Proposed Project. All turbines would be feathered when the ambient temperature is above 10°C based on a 5-minute rolling average from one half-hour before sunset to one half-hour after sunrise, during the spring migration season and summer (April 1 through July 31) up to 3.0 m/s, and during the fall migration season (August 1 through October 15) up to 6.5 m/s. In this alternative, take of 1.4 Indiana bats per year, for a total of 49 Indiana bats over the 35-year permit term, and take of 1 northern long-eared bat per year, for a total of 34.1 northern long-eared bats over the 35-year permit term, would be permitted; (4) Less Restrictive Operations alternative, in which the Service would issue an ITP for the HCP, but turbine operations would be different than the Applicant's Proposed Project. All turbines would be feathered when the ambient temperature is above 10°C based on a 5-minute rolling average from one half-hour before sunset to one half-hour after sunrise during the spring migration season and summer (April 1 through July 31) up to 3.0 m/s, and during the fall migration season (August 1 through October 15) up to 4.0 m/s. In this alternative, take of 2.6 Indiana bats per year, for a total of 91 Indiana bats over the 35-year permit term, and take of 1.8 northern long-eared bats per year, for a total of 62.2 northern long-eared bats over the 35-year permit term, would be permitted. The quantity of mitigation needed to offset the impact of the taking and the level of effort of monitoring varies between the alternatives, although mitigation, monitoring, adaptive management, and funding assurances are components of all three action alternatives.

The DEA considers the direct, indirect, and cumulative effects of the alternatives, including any measures intended to minimize and mitigate such impacts. The DEA also identifies additional alternatives that were considered but were eliminated from analysis as detailed in section 2.4 of the DEA.

The Service invites comments and suggestions from all interested parties on the content of the DEA. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

Public Comments

You may submit your comments and materials related to the draft HCP, DEA, or other supporting documents by one of the methods listed in **ADDRESSES**. We request you send comments using only one of the methods described in **ADDRESSES**.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection by appointment, during normal business hours, at the Ohio Ecological Services Field Office in Columbus, Ohio (see **FOR FURTHER INFORMATION CONTACT**). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C.1539(c)) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Lori Nordstrom,

Assistant Regional Director.

[FR Doc. 2019–28112 Filed 12–27–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1188]

Certain Pick-Up Truck Folding Bed Cover Systems and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 26, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Extang Corporation of Ann Arbor, Michigan and Laurmark Enterprises, Inc. d/b/a BAK Industries of Ann Arbor, Michigan. Supplements to the complaint were filed on November 27, 2019 and December 16, 2019. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pick-up truck folding bed cover systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,484,788 (''the '788 patent'') and U.S. Patent No. 8,061,758 (''the '758 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2019).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 20, 2019, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 of the '788 patent and claims 2 and 3 of the '758 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''folding cover assemblies for pick-up truck cargo boxes and components thereof'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Extang Corporation, 5400 S. State Road, Ann Arbor, MI 48108.

Laurmark Enterprises, Inc., d/b/a BAK Industries, 5400 Data Court, Ann Arbor, MI 48108.

(b) The respondents are the following entities alleged to be in violation of section 337, and is/are the parties upon which the complaint is to be served:

Tyger Auto Inc., 2615 West Renaissance Parkway, Rialto, CA 92376.

Cixi City Liyuan Auto Parts Co. Ltd., No. 72 Haiwei Avenue, West District, Guanhaiwei Industrial Park, Cixi City, Zhejiang Province, China 315145.

Hong Kong Car Start Industries Co., Limited Shidai Xinju, Building NG No. 681, West Huancheng Road, Haishu District, Zhejian Province, China 315000.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice

and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28006 Filed 12–27–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1176]

Certain Semiconductor Devices and Components Thereof (I); Commission Determination Not To Review an Initial Determination (Order No. 7) Terminating an Investigation Due to a Settlement Agreement; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined not to review an initial determination (''ID'') (Order No. 7) terminating the investigation due to a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On October 1, 2019, the Commission instituted the present investigation based on a complaint and supplementation thereto filed by Globalfoundries U.S. Inc. (''Globalfoundries'') of Santa Clara, California. 84 FR 52125–26 (Oct. 1, 2019). The complaint, as supplemented, alleges violations of 19 U.S.C. 1337, as amended (''Section 337''), based upon the importation into the United States, sale for importation, and sale in the United States after importation of certain semiconductor devices, products containing the same, and components thereof that allegedly infringe one or more of the asserted claims of U.S. Patent Nos. 8,912,603; 7,750,418; and 8,936,986. *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation named 22 respondents (collectively, ''Respondents''), including Taiwan Semiconductor Manufacturing Co. of Hsinchu, Taiwan and TSMC North America of San Jose, California (collectively, ''TSMC''). *Id.* at 52126. The Office of Unfair Import Investigations (''OUII'') was also named as a party. *Id.*

On November 8, 2019, Globalfoundries and all 22 Respondents filed a joint motion to terminate the investigation based on a settlement agreement (including a patent cross-license agreement) reached between Globalfoundries and TSMC that purportedly resolves all of the issues with respect to all of the Respondents in this investigation. The joint motion includes an unredacted, confidential copy of the patent cross-license agreement, which the parties request be disclosed only to Globalfoundries, TSMC, and Commission staff. The parties also confirmed that there are no other agreements, written or oral, express or implied, between Globalfoundries and Respondents relating to the subject matter of the investigation. On November 20, 2019, OUII filed a response supporting the motion and the request to limit disclosure of the patent cross-license agreement.

On November 25, 2019, the presiding administrative law judge (''ALJ'') entered the subject ID (Order No. 7) granting the joint motion to terminate the investigation. The ID agrees with the parties that Commission policy and the public interest generally favors settlements. Order No. 7 at 2 (Nov. 25, 2019). The ID further finds that termination of the investigation will not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, or U.S. consumers. *Id.* The ID also grants the parties' request to limit disclosure of the unredacted version of the confidential settlement agreement to the settling parties and Commission staff. *Id.* at 3.

No petitions to review the subject ID were filed. The Commission has determined not to review the subject ID. The investigation is terminated.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28041 Filed 12–27–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–047]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 10, 2020 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731–TA–1443 (Final) (Carbon and Alloy Steel Threaded Rod from Taiwan). The Commission is currently scheduled to complete and file its determination and views of the Commission by January 23, 2020.
5. Outstanding action jackets: None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: December 20, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–28251 Filed 12–26–19; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1177]

Certain Semiconductor Devices, Products Containing the Same, and Components Thereof (II); Commission Determination Not To Review an Initial Determination Terminating the Investigation in its Entirety Based on a Settlement Agreement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') terminating the investigation as to all respondents, Taiwan Semiconductor Manufacturing Co., Ltd. of Hsinchu, Taiwan; TSMC North America and TSMC Technology, Inc. of San Jose, California (collectively, ''TSMC''); Broadcom Inc., Broadcom Corporation, and Cisco Systems, Inc., all of San Jose, California; NVIDIA Corporation and Arista Networks, Inc., both of Santa Clara, California; Apple Inc. of Cupertino, California; ASUSTeK Computer Inc. of Taipei, Taiwan; and Lenovo Group Ltd. of Beijing, China (collectively, ''Respondents''), based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 2, 2019, based on a complaint filed on behalf of Globalfoundries U.S. Inc. (''Globalfoundries'') of Santa Clara, California. 84 FR 52535–36 (Oct. 2, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, products containing the same, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,823,178; 9,105,643; 7,378,357; and 9,082,877. The Commission's notice of investigation names all Respondents. The Office of Unfair Import Investigations (''OUII'') is participating in the investigation.

On November 12, 2019, Globalfoundries and Respondents jointly moved to terminate the investigation based on a settlement agreement between Globalfoundries and TSMC that resolves all issues as to all Respondents in the investigation. On November 18, 2019, OUII filed a response in support of the motion.

On November 25, 2019, the ALJ issued the subject ID (Order No. 5), granting the joint motion to terminate the investigation in its entirety based on the settlement agreement. The ID finds that the motion for termination satisfied Commission Rules 210.21(a)(2) and (b)(1) (19 CFR 210.21(a)(2), (b)(1)) and that termination of the investigation is not contrary to the public interest. No party petitioned for review.

The Commission has determined not to review the subject ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: December 20, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28043 Filed 12–27–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CHEDE–8

Notice is hereby given that, on December 4, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CHEDE–8 (''CHEDE–8'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Cummins, Columbus, IN; Eaton, Marshall, MI; Garret Advancing Motion, Torrance, CA; Guangxi Yuchai Machinery, Guangxi, PEOPLE'S REPUBLIC OF CHINA; Hyundai Motor Group, Gyeonggi-do, REPUBLIC OF KOREA; Isuzu, Tokyo, JAPAN; Lubrizol Corporation, Wickliffe, OH; Superturbo Technologies, Loveland, CO; Volvo Powertrain North America, Hagerstown, MD; and Weichai Power Co. Ltd., Weifang, PEOPLE'S REPUBLIC OF CHINA.

The general area of CHEDE–8's planned activity is to develop new and novel technologies that provide clean and efficient engine systems; to research diesel powertrain systems for the heavy duty segment that can achieve the newly proposed California Air Resources Board (CARB) Low NO_X standard of 0.02 g/bhp-hr with 2027 Greenhouse Gas (GHG) emissions; to demonstrate a clean diesel powertrain system capable of meeting the potential Euro 7 NO_X standard and 2030 CO_2 limits for the light duty segment; and to focus on advanced combustion and engine design concepts that have the potential to disrupt diesel engines in the future.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–28144 Filed 12–27–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on December 12, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''),

Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Rhode & Schwartz GmbH & Co. KG., Munich, GERMANY, has been added as a party to this venture.

Also, Telstra, Melbourne, AUSTRALIA; Suitcase TV, Ipswich, UNITED KINGDOM; and Philip Soares (individual member), Bellevue, WA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 13, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 17, 2019 (84 FR 55585).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–28146 Filed 12–27–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[Docket No. FBI–155]

Federal Bureau of Investigation; Records Management Division; National Name Check Program Section; Revised User Fee

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Notice.

SUMMARY: This notice establishes a revised user fee for federal agencies requesting name-based, non-criminal justice background checks of the Federal Bureau of Investigation's (FBI) Central Records System through the National Name Check Program (NNCP). The total resource costs associated with providing these name check services have been calculated to ensure full reimbursement to the FBI. The FBI is also authorized to charge an additional amount to defray expenses required to update and improve the NNCP's technological infrastructure, which supports the automation of processes involving name-based background checks. This notice explains the methodology used to calculate revised fees and also provides the new fee schedule. The NNCP is replacing its current multiple fee structure with a single user fee.

DATES: This fee schedule is effective February 1, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Antony A. Jung, Section Chief, National Name Check Program Section, Records Management Division, FBI, 170 Marcel Drive, Winchester, Virginia 22602.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2010, the FBI published the Final Rule (75 FR 24796) setting forth the FBI Director's authority to establish and collect fees for providing name-based background checks conducted by the NNCP of the Records Management Division. The Final Rule explains the methodology used to calculate the fees and provides that future fee adjustments will be made by notice published in the **Federal Register**. In accordance with the requirements of 28 CFR 20.31(e)(3), the FBI is required to periodically review the amount it collects for the NNCP in order to determine the current cost of processing name checks for non-criminal justice purposes.

II. Revised Fee

In October of 2018, the FBI retained a contractor to conduct an independent user fee study for the NNCP. The NNCP currently charges different fees, depending on whether the request is submitted manually or electronically or if expedited processing is required. The fee charged for electronic submissions also varies depending on the level of analysis that the NNCP must perform. The current fee structure is as follows:

NNCP's Current User Fee Schedule

Service	Current fee
Electronic Submission:	
Batch Process Only	$2.50
Batch + File Analysis	42.00
Manual Submission	66.50
Expedited Submission	66.50

As a result of the fee study, the contractor recommended that the FBI combine the current fee categories, which have been in effect since 2010, into a single fee. This recommendation was based on three factors:

- Improvement in information technology capabilities: The NNCP's new web interface enables all customers to submit name checks electronically with options to adjust their priority. The technology advancements have resulted in the elimination of the Manual submission type and have so drastically reduced the number of expedited submissions that they no longer warrant their own fee categories.
- Lack of customer choice: Under the existing fee schedule, NNCP customers do not choose between an Electronic or File Analysis level of service and the associated fee. Rather, NNCP performs an electronic name-based background check on all requests. If the automated search algorithm identifies the presence of a record, then NNCP's analysts conduct file analysis and the program charges an additional fee. While every name check request begins with an Electronic Batch level of service, approximately 40% also require an additional File Analysis level of service, which comes with the additional fee. Neither the customer nor NNCP know which level of service will be required until after the customer has submitted the name check request and NNCP has completed its services. This lack of certainty has rendered it challenging for customers to budget for name check services. The new, single fee will provide customers with more certainty as to how much they will owe based on their estimated volume of name check requests each year.
- Less administrative burden: A single fee reduces the administrative burden associated with the billing and collections of multiple fee categories and simplifies the budgeting process.

Information Used To Calculate the Revised Fee

Using Fiscal Year (FY) 2018 cost information, the FBI conducted a fee study to determine its cost for conducting name-based background checks. Once that study was complete, the FBI conducted further analysis to account for anticipated programmatic changes and staffing levels moving forward in FY 2020, as well as forecasted production volumes to determine future automation and enhancement costs. The FBI used these inputs to project total costs for name-based, non-criminal justice name checks for FY 2020. The single fee structure simplifies this calculation by dividing

total costs by total volume to arrive at a single fee for each name check request.

Product/service	FY 2020 volume forecast
FBI Investigative Files Check	3,313,844

Cost pool	Forecasted FY 2020 cost
Cost of Name-Based Checks	$63,225,188
Automation and Enhancement	6,414,111
Total	$69,639,299

Unit costs (cost pool divided by volume) and the corresponding fee rate are rounded up to the nearest $0.25 increment.

Cost pool categories	Unit rate
Cost of Name-Based Checks	$19.25
Automation and Enhancement	2.00
FBI Investigative Files Check	21.25

This revised fee, of $21.25 per check, will become effective on February 1, 2020.

Dated: December 19, 2019.

Christopher A. Wray,

Director, Federal Bureau of Investigation.

[FR Doc. 2019–28165 Filed 12–27–19; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers Under Prohibited Transaction Exemption 1984–14

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers under Prohibited Transaction Exemption 1984–14,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 29, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1210-007* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers under Prohibited Transaction Exemption 1984–14 information collection. PTE 84–14, a class exemption that permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by ''qualified professional asset managers'' (QPAMs) that are independent of the parties in interest and which meet specified financial standards. The exemption provides additional exemptive relief for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief also is provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund. QPAMs are permitted to manage an investment fund containing the assets of the QPAM's own plan or an affiliate's plan.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0128.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0128. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers under Prohibited Transaction Exemption 1984–14.

OMB Control Number: 1210–0128.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 4,031.

Total Estimated Number of Responses: 4,071.

Total Estimated Annual Time Burden: 96,774 hours.

Total Estimated Annual Other Costs Burden: $40,311,395.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–28049 Filed 12–27–19; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (PTE 1977–4)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Prohibited Transaction Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (PTE 1977–4),'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before January 29, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-1210-005* (this link will only become active on the day following publication of this notice) or by contacting Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Prohibited Transaction Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (PTE 1977–4) information collection. Prohibited Transaction Exemption (PTE) 77–4 provides relief from the restrictions of section 406 of ERISA and from the sanctions resulting from the application of section 4975 of the Code, for an employee benefit plan's purchase or sale of shares of an openend investment company registered under the Investment Company Act of 1940 (mutual fund) when an investment advisor for the mutual fund or its affiliate is: (1) A plan fiduciary; and (2) not an employer of employees covered by the plan. Section II(d) of PTE 77–4 contains certain conditions for the exemptive relief and provides, in pertinent part, that: A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. Delivery of a ''summary prospectus'' may be used to satisfy the condition in section II(d) of PTE 77–4 requiring the delivery of a mutual fund's prospectus to the second fiduciary if the summary prospectus meets the requirements of the Securities and Exchange Commission's (SEC) revised disclosure provisions for mutual funds including a summary prospectus rule that were published in 2009. Pursuant to the SEC's revised disclosure provisions, mutual funds also are required to send the full prospectus to the investor upon an investor's request and to provide the full prospectus on-line at a specified internet site.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0049.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2019. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 27, 2019 (84 FR 11573).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty-(30) days of publication of this notice in the **Federal Register**. In order to help ensure

appropriate consideration, comments should mention OMB Control Number 1210–0049. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–EBSA.

Title of Collection: Prohibited Transaction Class Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans (PTE 1977–4).

OMB Control Number: 1210–0049.

Affected Public: Private Sector: Not-for-profit institutions; Businesses or other for-profits.

Total Estimated Number of Respondents: 846.

Total Estimated Number of Responses: 279,653.

Total Estimated Annual Time Burden: 23,728 hours.

Total Estimated Annual Other Costs Burden: $117,954.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: December 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–28045 Filed 12–27–19; 8:45 am]

BILLING CODE 4510–29–P

OFFICE OF MANAGEMENT AND BUDGET

Draft 2018–2019–2020 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance With the Unfunded Mandates Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of availability and request for comments.

SUMMARY: The Office of Management and Budget (OMB) requests comments on its Draft 2018–2019–2020 Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, available at: *https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/.* The Draft Report is divided into two parts, the first of which is further divided into three chapters. Part I, Chapter I examines the benefits and costs of major Federal regulations issued in fiscal years 2017, 2018 and 2019. Part I, Chapter II discusses regulatory impacts on State, Local, and tribal governments, small business, wages and employment, and economic growth. Part I, Chapter III offers recommendations for regulatory reform. Part II summarizes agency compliance with the Unfunded Mandates Reform Act. OMB requests that comments be submitted electronically to OMB by February 20, 2020, through *www.regulations.gov* using Docket ID OMB–2019–0004.

DATES: To ensure consideration of comments as OMB prepares this Draft Report for submission to Congress, comments must be in writing and received by February 20, 2020.

ADDRESSES: Submit comments by one of the following methods:

• *www.regulations.gov:* Direct comments to Docket ID OMB–2019–0004.

• *Fax:* (202) 395–7285

• *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 9th Floor, 725 17th Street NW, Washington, DC 20503. To ensure that your comments are received, we recommend that comments on this draft report be electronically submitted.

All comments submitted in response to this notice will be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. The *www.regulations.gov* website is an ''anonymous access'' system, which means OMB will not know your identity or contact information unless you provide it in the body of your comment.

FOR FURTHER INFORMATION CONTACT: Italy Martin, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 9th Floor, 725 17th Street NW, Washington, DC 20503. Telephone: (202) 395–1046.

SUPPLEMENTARY INFORMATION: Congress directed the Office of Management and Budget to prepare an annual Report to Congress on the Benefits and Costs of Federal Regulations. Specifically, Section 628 of the FY 2000 Treasury and General Government Appropriations Act, also known as the ''Regulatory Right-to-Know Act,'' requires OMB to submit a report on the benefits and costs of Federal regulations together with recommendations for reform. It states that the report should contain estimates of the costs and benefits of regulations in the aggregate, by agency and agency program, and by major rule, as well as an analysis of impacts of Federal regulation on State, local, and tribal governments, small businesses, wages, and economic growth. The Regulatory Right-to-Know Act also states that the report should be subject to notice and comment and to peer review. Additionally, in accordance the Unfunded Mandates Reform Act of 1995 (UMRA), OMB reports on agency compliance with UMRA Title II, which generally requires that an agency conduct a cost-benefit analysis, and identify and consider a reasonable number of regulatory alternatives, before proposing or finalizing a rule that may result in expenditures of more than $100 million (adjusted for inflation) in at least one year by State, local, and tribal governments, or by the private sector; each agency must also seek input from State, local, and tribal governments.

Dominic J. Mancini,

Acting Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2019–28060 Filed 12–27–19; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 29, 2020. This

application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2020–026

1. *Applicant:* Brandon Savory, 662 Ash St, Prescott, AZ 86305.

Activity for Which Permit Is Requested: Waste management. Applicant requests that the yacht SV Cool Change be allowed to operate in the Antarctic Treaty area, to cruise along the Antarctic Peninsula for tourism and sightseeing purposes. Applicant proposes to make select stops at non-protected area landings, for day-time sightseeing. Garbage and food waste would be stored onboard the vessel and disposed of outside Antarctica. Human waste generated during shore excursions would be contained, stored on the vessel, and disposed of outside Antarctica. Should it be absolutely necessary, greywater and blackwater would be released at least 12 miles offshore and while the vessel maintains a speed of at least four knots.

Location: Antarctic Peninsula region.

Dates of Permitted Activities: January 1–February 28, 2020.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–28097 Filed 12–27–19; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 110 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–80, CP2020–79.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–28047 Filed 12–27–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87841; File No. SR–NYSEAMER–2019–58]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its NYSE American Equities Price List and Fee Schedule and the NYSE American Options Fee Schedule To Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection With the Exchange's Co-location Services

December 23, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 16, 2019, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its NYSE American Equities Price List and Fee Schedule (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location [4] services to extend a fee discount for the Partial Cabinet Solution (''PCS'') bundles that the Exchange offers Users.[5]

There are four PCS bundles, each of which includes a partial cabinet; access

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (collectively, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[7]

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (''MRC'') for the first 24 months.[8] The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.[9] The Exchange does not propose to amend the length of the discount period.

The amended portions of the Price List and Fee Schedule would read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2020: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2020: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020: $15,000 monthly.

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Price List and Fee Schedule are applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.''[10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN and IP network connections—and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.[11]

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[12]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current

[6] *See* Securities Exchange Act Release No. 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89).

[7] *Id.,* at 7384.

[8] *See* Securities Exchange Act Release No. 84925 (December 21, 2018), 83 FR 67754 (December 31, 2019) (SR–NYSEAMER–2018–55).

[9] The Exchange previously extended the MRC reduction for one year. *See* Securities Exchange Act Release Nos. 82224 (December 6, 2017), 82 FR 58465 (December 12, 2017) (SR–NYSEAmer–2017–35); and 79717 (December 30, 2016), 82 FR 1767 (January 6, 2017) (SR–NYSEMKT–2016–123).

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See supra* note 7.

regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS bundles. Extending the existing eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[19]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[15] *See* 78 FR 50471, *supra* note 5, at 50471. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–72, SR–NYSEArca–2019–97, SR–NYSECHX–2019–27, and SR–NYSENAT–2019–32.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

[19] *See supra* note 7.

established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20]

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–58 on the subject line.

[20] 15 U.S.C. 78f(b)(8).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–58 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28169 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87837; File No. SR–FINRA–2019–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Allow FINRA To Publish or Distribute Aggregated Transaction Information and Statistics on U.S. Treasury Securities

December 20, 2019.

I. Introduction

On November 12, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 6750 to allow FINRA to publish or distribute aggregated transaction information and statistics on U.S. Treasury Securities. The proposed rule change was published for comment in the **Federal Register** on November 20, 2019.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Existing FINRA Rule 6750(a) provides that FINRA will publicly disseminate information regarding a transaction in a TRACE-Eligible Security [4] immediately upon receipt of a transaction report, unless an exception applies. FINRA Rule 6750(c)(5) specifies that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is a U.S. Treasury Security.[5] Currently, Supplementary Material .01 to FINRA Rule 6750 provides that, notwithstanding FINRA Rule 6750(c), FINRA may publish or distribute aggregated transaction information and statistics on non-disseminated TRACE-Eligible Securities other than U.S. Treasury Securities at no charge, unless FINRA submits a rule filing to the Commission imposing a fee for such data.

FINRA has proposed to amend Supplementary Material .01 to FINRA Rule 6750 to provide that FINRA may publish or distribute weekly aggregated transaction information and statistics on non-disseminated TRACE-Eligible Securities that are U.S. Treasury Securities. Pursuant to the proposed rule change, the aggregated U.S. Treasury Securities data would not be published or distributed by individual security, except for aggregated data that includes on-the-run U.S. Treasury Securities that may have had only one on-the-run security during the aggregated period.[6] In addition, the aggregated data would not identify individual market participants or transactions. FINRA has proposed to provide the aggregated data on U.S. Treasury Securities at no charge, unless FINRA first establishes a fee for such data by submitting an appropriate rule filing, as is the case with the aggregated data for TRACE-Eligible Securities that are not U.S. Treasury Securities.

FINRA has stated that the proposed rule change will become effective on the date of Commission approval.[7]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87540 (November 14, 2019), 84 FR 64147 (November 20, 2019) (''Notice'').

[4] FINRA Rule 6710(a) defines a ''TRACE-Eligible Security'' as a debt security that is U.S. dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act of 1933 Rule 144(a)(3), sold pursuant to Securities Act of 1933 Rule 144A; (2) issued or guaranteed by an Agency, as defined in FINRA Rule 6710(k) or a Government-Sponsored Enterprise as defined in FINRA Rule 6710(n); or (3) a U.S. Treasury Security, as defined in FINRA Rule 6710(p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument, as defined in FINRA Rule 6710(o).

[5] ''U.S. Treasury Security'' means a security, other than a savings bond, issued by the U.S. Department of the Treasury (''Treasury Department'') to fund the operations of the federal government or to retire such outstanding securities. The term also includes separate principal and interest components of a U.S. Treasury Security that have been separated pursuant to the Separate Trading of Registered Interest and Principal of Securities (STRIPS) program operated by the Treasury Department. *See* FINRA Rule 6710(p).

[6] In the Notice, FINRA stated that it intends to publish weekly volume information aggregated by U.S. Treasury Security subtype (*e.g.,* Bills, Floating Rate Notes, Treasury Inflation-Protected Securities, and Nominal Coupons). FINRA further stated that the volume information may be grouped within dealer-to-customer, ATS and dealer-to-dealer, remaining years to maturity, or other categories. *See* Notice, 84 FR at 64148.

[7] *See id.*

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o–3(b)(6).

which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposal will benefit investors and market participants by facilitating greater transparency in the U.S. Treasury Security market by making publicly available aggregate trading volume for transactions in U.S. Treasury Securities that are reported to TRACE. The Commission believes that the proposal is reasonably designed to preserve the confidentiality of individual market participants and transactions. The Commission also notes that the proposed rule change would not impose any new cost on FINRA members, because any aggregate statistics that are published or distributed by FINRA pursuant to this rule change would be derived from information that members are already required to report to TRACE.

Pursuant to Section 19(b)(5) of the Act,[10] the Commission consulted with and considered the views of the Treasury Department in determining to approve the proposed rule change. The Treasury Department indicated its support for the proposal.[11] Pursuant to Section 19(b)(6) of the Act,[12] the Commission has considered the sufficiency and appropriateness of existing laws and rules applicable to government securities brokers, government securities dealers, and their associated persons in approving the proposal. Currently there is not available, to the public or otherwise, a comprehensive source of aggregated volume data that reflects all major segments of the market for U.S. Treasury Securities.[13] The proposed rule change would promote transparency in the market for U.S. Treasury Securities by enabling FINRA to publish or distribute certain aggregate information regarding transactions in U.S. Treasury Securities that are reported to TRACE.

[10] 15 U.S.C. 78s(b)(5) (providing that the Commission ''shall consult with and consider the views of the Secretary of the Treasury prior to approving a proposed rule filed by a registered securities association that primarily concerns conduct related to transactions in government securities, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor'').

[11] Email from Treasury Department staff to Michael Gaw, Assistant Director, Division of Trading and Markets, Commission (December 18, 2019).

[12] 15 U.S.C. 78s(b)(6).

[13] *See* Notice, 84 FR at 64149.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–FINRA–2019–028) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28084 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87847; File No. SR–CboeEDGA–2019–023]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .01 of Rule 2.4 To Allow the Exchange To Provide Annual Notification to Individual Members That Are Subject to Paragraph (b) of Rule 2.4

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume on the Exchange.

The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume on the Exchange.

As background, Regulation Systems Compliance and Integrity (''Regulation SCI'')[5] applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''). Specifically, Rule 1004 of Regulation SCI states that each SCI entity shall establish standards for the designation of Members that are necessary for the maintenance of fair and orderly markets in the event of the activation of the business continuity and disaster recovery plans, designate such Members in scheduled functional and performance testing of the operation of such plans no less than once every 12 months, and coordinate the testing of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

such plans on an industry- or sector-wide basis with other SCI entities.

In order to comply with the coordination requirement among SCI entities, the Exchange has conducted the required operational testing in parallel with the industry-led testing program coordinated by the Securities Industry and Financial Markets Association (''SIFMA''), which occurs on an annual basis. Currently, Interpretation and Policy .01 to Rule 2.4 requires the Exchange to identify and provide notice to designated Members under paragraph (b) on a quarterly basis based on trade activity during the previous quarter on the Exchange. Any Member that receives such notice is required to participate in the next annual functional and performance testing, which generally occurs in October. As such, a Member that receives notice in the third and/or fourth quarter of the preceding year or the first and/or second quarters of the current year will be required to participate in the annual functional and performance testing. As a result, Members would be notified in October, January, April, and/or July of their requirement to connect to the Exchange's backup systems and participate in functional and performance testing scheduled for October, which means that certain Members receive notification of their designation and requirement to connect and participate in functional and performance testing only three months prior to the scheduled operational and functional testing. Further, a Member that had been designated in any of the four preceding quarters would be required to participate in the functional and performance testing even if that Member did not meet the designation requirements of subparagraphs (b)(1) in the most recent quarter (*i.e.,* the second quarter).

As proposed, the amendment would allow the Exchange to identify designated Members based on trade activity during a single quarter for a given year, and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October. As such, the proposal would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the volume requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations.[6] As the proposed amendment provides the Exchange with greater flexibility in selecting the relevant quarter's trade data for which the designated Members will be identified, the designated Members may be identified based on more recent trading activity, rather than trade activity that potentially occurred more than one year prior to such testing and thus would more accurately represent the Members who met the requirements set forth in paragraph (b)(1) of Rule 2.4.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposal is consistent with the Act because, as noted above, the proposal would allow the Exchange to identify designated Members based on activity during a single quarter for a given year and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October, which the Exchange believes would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations. The proposed amendment will harmonize Exchange rules with those of other self-regulatory organizations in furtherance of the coordination of testing among SCI entities required by Rule 1004(c) of Regulation SCI. As set forth in Regulation SCI, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.''[7] The Exchange believes that the proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive proposal as it is intended to coordinate notification of Member participation requirements in the Exchange's testing of business continuity and disaster recovery plans with the annual industry-wide testing program.

[6] *See* Cboe Exchange, Inc. (''Cboe'') Rule 5.24, which states ''[Cboe] provides [ ] Trading Permit Holders with reasonable advance notice that they must participate in the testing described in paragraph (b) of this Rule 5.24.'' *See also* New York Stock Exchange (''NYSE'') Rule 49(b)(4), which states ''[a]t least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will . . . notify those member organizations that are required to participate based on such criteria.''

[7] *See* supra note 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would eliminate potential confusion across self-regulatory organizations and simplify and clarify the process of notification to designated Members pursuant to paragraph (b) of Rule 2.4. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2019–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2019–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2019–023 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28175 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87822; File No. SR-Phlx-2019–54)

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled "Off-Exchange RWA Transfers" at Phlx Rule 1045

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Off-Exchange RWA Transfers'' at Phlx Rule 1045.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Off-Exchange RWA Transfers'' at Phlx Rule 1045, which is currently reserved. This proposal is substantially the same as Cboe Exchange, Inc. (''Cboe'') Rule 6.8.[3]

Proposed Rule 1045 is intended to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Members[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Registered Options Traders[11] and Specialists[12] (collectively ''Market Makers'') to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. Phlx currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below)[13]; and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[14]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Rule 1045(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

[4] 17 CFR § 240.15c3–1.

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[6] The term Clearing Member is defined within Rule 1000(b)(3). All Clearing Members must also be clearing members of The Options Clearing Corporation (''Clearing Corporation'' or ''OCC'').

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[11] *See* Rule 1000(b)(57). A ''Registered Options Trader'' shall mean a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System.

[12] *See* Rule 1000(b)(58). A ''Specialist'' shall mean a member who is registered as an options Specialist pursuant to Rule 1020(a). A Specialist includes a Remote Specialist which is defined as a Specialist in one or more classes that does not have a physical presence on an Exchange's trading floor and is approved by the Exchange pursuant to Rule 501.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[14] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[15] A Member may change the give up for a transaction within a specified period of time.[16] Additionally, a Member may also change the Clearing Member [17] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[18] In the above example, if Market Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Rule 1045 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions described above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Member Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

[15] *See* Phlx Rule 1043.

[16] *See* Phlx Rule 1037.

[17] The Clearing Member Trade Assignment (''CMTA'') process at OCC facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[18] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

RWA Transfers may not result in preferential margin or haircut treatment.[19] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[20]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(5) of the Act,[22] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [23] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's proposal is substantially the same as Cboe Rule 6.8 [sic].

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the

[19] *See* proposed paragraph (a)(4).

[20] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and subparagraph (f)(6) of Rule 19b–4 thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–54 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28030 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87813; File No. SR–NYSEArca–2019–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E

December 20, 2019.

On June 12, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to list and trade shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on July 1, 2019.[3]

On August 12, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 24, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On October 4, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86195 (June 25, 2019), 84 FR 31373 (July 1, 2019).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86631 (Aug. 12, 2019), 84 FR 42028 (Aug. 16, 2019).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 87071 (Sept. 24, 2019), 84 FR 51646 (Sept. 30, 2019). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 51647 (citing 15 U.S.C. 78f(b)(5)).

change as originally filed.[8] The proposed rule change, as modified by Amendment No. 1, was published in the **Federal Register** on October 21, 2019.[9] The Commission has received comment letters on the proposed rule change.[10]

Section 19(b)(2) of the Act [11] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was July 1, 2019. December 28, 2019, is 180 days from that date, and February 26, 2020, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[12] designates February 26, 2020, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2019–39).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28023 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[8] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939-6255643-192909.pdf.*

[9] *See* Securities Exchange Act Release No. 87301 (Oct. 15, 2019), 84 FR 56219 (Oct. 21, 2019).

[10] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939.htm.*

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87846; File No. SR–CBOE–2019–118]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Correct Certain Erroneous Cross-References, Add Inadvertently Omitted Rule Text, and Conform the Use of Certain Defined Terms

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2019, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to correct certain erroneous cross-references, add inadvertently omitted rule text, and conforms the use of certain defined terms. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). On October 7, 2019, Cboe Options migrated its trading platform to the same system used by the Cboe Affiliated Exchanges. In connection with this technology migration, Cboe Options updated and reorganized its entire Rulebook (the ''post-migration Rulebook''), which became effective upon the technology migration.

First, the proposed rule change corrects cross-reference errors in Rules 5.1, 5.4, 5.6, 5.33, 5.36, 5.37, 5.38, 5.50, 5.52, 5.54, 5.55, and 5.56 that inadvertently occurred as a result of the total restructuring of its Rulebook.

Second, the proposed rule change adds rule text that was unintentionally omitted from the post-migration Rulebook. The proposed rule change amends Rule 5.83(a)(2) to add Penny Cabinet and Sub-Penny Cabinet orders to the list of types of order instructions available for PAR routing for manual handling and open outcry trading on the Exchange. Currently, Rule 5.85(h) governs cabinet trading on the Exchange and states that cabinet orders (*i.e.,* penny cabinet and sub-penny cabinet orders) may only execute on the Exchange's trading floor in open outcry. Therefore, penny cabinet and sub-penny cabinet orders are types of order instructions that are available for open outcry trading. However, when the Exchange proposed Rule 5.83(h) and incorporated it into the post-migration Rulebook,[3] it inadvertently did not include these cabinet order instructions

[3] *See* Securities and Exchange Act Release No. 86994 (September 17, 2019), 84 FR 49774 (September 23, 2019) (Proposed Rule Change To Amend the Exchange's Rules Regarding Cabinet Trading Upon the Migration of the Exchange's Trading Platform to the Same System Used by the Cboe Affiliated Exchanges) (SR–CBOE–2019–058); *see also* Securities and Exchange Act Release No. 87224 (October 4, 2019), 84 FR 54652 (October 10, 2019) (SR–CBOE–2019–081), which relocated the cabinet trading rule in the post-migration Rulebook from Rule 5.12 to Rule 5.85(h) where it is currently located.

in Rule 5.83(a)(2), which the Exchange now proposes to include.

The proposed rule change also reinstates a provision from former Rule 8.14.01(c)[4] that was inadvertently not included in the post-migration Rulebook.[5] Specifically, the Exchange relocated the provision under former Rule 8.14 that allows the Exchange to determine to list SPX or VIX on a group basis to post-migration Rule 4.13(f), as well as removed other provisions under the former rule that had been previously moved to other rules as part of the migration.[6] As a result of the restructuring, the Exchange inadvertently did not include former Rule 8.14.01(c) in the post-migration Rulebook, which required the Exchange to determine System trading parameters on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis. The Exchange continues to establish such parameters on a group basis, and reinstating this provision in Rule 1.5(c) ensures that the post-migration Rulebook accurately reflects the manner in which the Exchange applies System parameters to classes the Exchange lists on a group basis. The Exchange notes that groups of SPX and VIX series exhibit different trading characteristics from series listed by class, and the Exchange generally establishes market models for options classes and groups of SPX and VIX series based on the characteristics that most fit the product which benefits investors. As such, the proposed rule change is designed to make it explicit in the Rules that the Exchange will continue to establish System parameters on a group basis in order to tailor such parameters to fit the group product characteristics. Likewise, as a result of the restructuring, the Exchange also inadvertently did not include the former provision(s) that allowed the Exchange to make determinations on a group basis that differed between Global Trading Hours (''GTH'') and Regular Trading Hours (''RTH'').[7] The proposed rule change thus incorporates Exchange determinations on a group basis among the list of other bases in Rule 1.5(b), which allows the Exchange to make determinations on different bases that differ between GTH and RTH, as SPX and VIX are available for trading during both sessions. The Exchange also notes that because trading characteristics during RTH may be different than those during GTH (such as lower trading levels, reduced liquidity, and fewer participants), the Exchange believes it is appropriate to continue this flexibility for determinations on a group basis.

In addition, the Exchange also notes that it inadvertently did not include the provision in former Rule 6.12(a)(3),[8] which allowed it to determine the fat finger buffer amount on a class-by-class basis. The proposed rule change to Rule 5.34(c)(1), which governs the limit order fat finger check, reinstates the provision that allows the Exchange to continue to determine a default buffer amount for the fat finger check on a class-by-class basis. The Exchange notes that the fat finger check is designed to prevent limit orders from executing at potentially erroneous prices, and that the Exchange currently maintains the same class basis flexibility pursuant to certain other price protection and risk control rules. This flexibility allows the Exchange to apply different settings and parameters to address the specific characteristics of that class and its market. For example, Rule 5.34(a)(2) (market order NBBO width protection), (a)(4)(B) (drill-through protection for order that execute or post to the Book), and (c)(11) (buy-write/married put check) each allow the Exchange to determine the respective price check buffer amounts on a class basis. As such, the proposed rule change to reinstate the flexibility to determine of the fat finger default buffer on a class basis makes it explicit that the Exchange may continue to set the default buffer with the same flexibility in order to appropriately address different trading characteristics, market models, and investor base of each class. Because the different characteristics among classes may cause what would be considered a potentially erroneous price to differ among classes, the Exchange believes it is appropriate to continue to this class-based flexibility in determining the buffer amount for the fat finger check, as well as allow Users to establish class based buffer amounts that differ from the Exchange's class based default amounts. The Exchange notes that in prior Rule 6.12(a)(3), though it allowed the Exchange to determine a fat finger buffer amount on a class-by-class basis, it had been silent as to User-established buffer amounts. The Exchange adopted language, that a User may establish a higher or lower amount than the Exchange default, for the migration in order to make the Exchange's fat finger rule consistent with the corresponding fat finger rules of the Affiliated Exchanges.[9] Therefore, the Exchange believes that the proposed rule change to mirror Users' ability to establish buffer amounts that differ from the Exchange's default buffer on a class basis would provide consistency in manner in which a User may establish buffer amounts around the Exchange-established default buffer amounts.

Finally, the proposed rule change conforms the use of certain defined terms in the post-migration Rulebook. The proposed rule change removes the term ''Hybrid System'' from Rule 8.20, and replaces it with the term ''System,'' which is the correct defined term in the post-migration Rulebook for the Exchange's trading System.[10] The proposed rule change also capitalizes the terms ''Penny Cabinet'' orders, ''Sub-Penny Cabinet'' orders, and ''Reporting Authority'' throughout the post-migration Rulebook. The proposed change makes these terms uniformly formatted in the post-migration Rulebook, as they are currently defined terms in the Rules and are capitalized in some Rules but not in others.[11]

[4] Former Rule 8.14.01(c) provided that System trading parameters will be established by the Exchange on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis.

[5] *See* Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (Proposed Rule Change To Amend Certain Rules Relating To Market-Makers Upon Migration to the Trading System Used by Cboe Affiliated Exchanges) (SR–CBOE–2019–059), which removed Rule 8.14.01, but did not relocate it to the post-migration Rulebook.

[6] *See* Securities Exchange Act Release No. 87337 (October 17, 2019), 84 FR 56879 (October 23, 2019) (SR–CBOE–2019–092).

[7] Former Rule 6.1A(i) allowed the Exchange to make a determination, to the extent the Rules allowed, that differed between GTH and RTH, including on a class-by-class or series-by-series basis. Former Rule 8.14.01(c) allowed the Exchange to determine System trading parameters on a group basis to the extent the Rules otherwise provide for such parameters to be established on a class basis. Likewise, other former rules provided it could also make determinations on a group basis where it was permitted to make determinations on a class basis (*e.g.,* former Rule 6.2.05 (for Exchange determinations related to the opening auction process), and former Rule 6.45 (for Exchange determinations related to order and quote priority and allocation). Therefore, as a whole, these provisions allowed the Exchange to make determinations on a group basis that differed between trading sessions.

[8] Former Rule 6.12(a)(3) provided, in part, that an acceptable tick distance would be determined by the Exchange on a class-by-class basis (or a premium basis, which was intentionally removed from the rule to coincide with planned migration functionality). The Exchange notes that the fat finger buffer amount was referred to as the ''acceptable tick distance'' in this former provision.

[9] *See* Securities Exchange Act Release No. 86923 (September 10, 2019), 84 FR 48664 (September 16, 2019) (SR–CBOE–2019–057); *see also* C2 Rule 6.14(c)(1); and EDGX Options Rule 21.17(b)(7).

[10] *See* Rule 1.1. The Exchange also notes that the term ''Hybrid class'' is no longer a relevant distinction because, as of 2018, all classes listed for trading on the Exchange now trade on the same platform (prior to that, certain classes traded on the Exchange's Hybrid 3.0 platform, while most classes traded on the Exchange's Hybrid platform).

[11] *See* Rule 1.1.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to correct inaccuracies that resulted from the recent restructuring of the Exchange's Rulebook. The proposed corrections to correct inaccurate cross-references within various Rules, reinstating rule text that was inadvertently omitted from the post-migration Rulebook (majority of which will allow the Exchange to continue to tailor certain settings to address different product characteristics and market conditions, thereby protecting investors), updating a Rule to provide consistency in connection with functionality available pre-migration (and being reinstated in the Rules) that is directly associated with functionality now available as of post-migration, and updating or uniformly formatting certain defined terms are designed to protect investors by ensuring that these Rules accurately reference and reflect the current, post-migration Rules in place, thereby mitigating any potential investor confusion. The proposed rule change will have no impact on trading on the Exchange, as almost all of the proposed rule changes are non-substantive in nature (as stated above, one proposed change merely updates a Rule to provide consistency in connection functionality now correlated with it as of post-migration).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive filing, as it merely updates the Rules to accurately reference the current, post-migration Rules. The proposed rule change is corrective in nature. The proposed rule change generally makes no substantive changes to the rules (one change merely updates a Rule to provide consistency between inadvertently omitted functionality now being reinstated and correlated functionality which had been adopted post-migration), and thus will have no impact on trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) under the Act[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow the Exchange to immediately correct inaccuracies that resulted from the recent restructuring of the Exchange's Rulebook, reinstate rule text that was inadvertently omitted from the post-migration Rulebook, and update and uniformly format certain defined terms. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay to allow the Exchange to correct inaccuracies and inadvertent omissions from the rules, which may help prevent investor confusion. The Commission notes that the proposed change does not raise new or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–118. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–118 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28174 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87814; File No. SR–IEX–2019–15]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing of Proposed Rule Change To Add a New Discretionary Limit Order Type

December 20, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 16, 2019, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to add a new Discretionary Limit order type (a ''D-Limit'' order).

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to introduce a new order type, a Discretionary Limit or ''D-Limit'' order, that is designed to protect liquidity providers from potential adverse selection by latency arbitrage trading strategies.[6]

Background

IEX believes that in the current market environment, market participants that have access to the fastest and most complete view of market data from all the major exchanges are able to predict imminent changes to national best bid and offer quotations (''NBBO''),[7] representing the best displayed bid and offer prices that are available in the market at any point in time. By sending orders to ''take liquidity'' against orders that are resting on exchanges or other trading venues in very small windows of time, generally no more than a few milliseconds before an anticipated change in the NBBO, trading firms seeking to exploit these speed and information asymmetry advantages can profit, to the corresponding disadvantage of institutional investors and other participants, whose resting orders are ''picked off'' by these faster firms at ''stale'' prices.

IEX further believes that this trading activity creates a substantial disincentive to market participants to provide exchange quotes and other orders that rest on exchanges' order books. To compensate for the resulting adverse selection, among other reasons, many exchanges employ maker-taker style fee schedules which pay rebates to liquidity providers that trade on their markets (''Maker-Taker'').

This phenomenon, commonly referred to as ''latency arbitrage,'' has led to proposals by equity and futures markets specifically designed to provide protection for resting orders in order to incentivize market makers and other liquidity providers to maintain tighter spreads with larger size. Most recently, Cboe EDGA Exchange, Inc. (''EDGA'') proposed a four-millisecond asymmetrical delay mechanism or ''speed bump'' that would apply only to incoming executable orders.[8] As set forth in its rule change proposal seeking Commission approval of this asymmetrical speedbump, EDGA states that the purpose of the asymmetrical speed bump is to provide ''an opportunity for liquidity providers to process cross-asset signals, and update their published quotations accordingly, before trading at stale prices with orders submitted by opportunistic trading firms that benefit from a latency advantage.'' [9] The EDGA proposal describes the challenges for liquidity providers as follows:

> Today, liquidity providers are frequently unable to adjust their displayed quotes based on changes in market information . . . before the fastest trading firms can trade against their quotes. Market makers and other liquidity providers use sophisticated pricing

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] As proposed, a D-Limit order is also eligible to take resting liquidity on entry. If not executed on entry, the order will post to the Order Book and be available to provide liquidity.

[7] The term ''NBBO'' means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b). *See* IEX Rule 1.160(u).

[8] *See* Securities Exchange Act Release No. 86168 (June 20, 2019), 84 FR 30282 (June 26, 2019) (SR–CboeEDGA–2019–012).

[9] *See supra* note 8, at 30283.

algorithms to determine how to price securities in the often hundreds or thousands of equity securities that they quote. . . . The potential for trading at stale prices increases risk for firms that wish to provide liquidity to the market, and harms market quality by causing liquidity providers to enter quotes that are wider or for a smaller size than they may otherwise be willing to trade.[10]

As discussed more fully below, IEX's proposal to establish a D-Limit order type is designed to protect liquidity providers, institutional investors as well as market makers, from potential adverse selection by latency arbitrage trading strategies in a fair and nondiscriminatory manner, without, as some commenters have mentioned, introducing concerns around unnecessary complexity, disparate treatment, and fair access by institutional investors to displayed quotations that have been voiced with regard to the EDGA asymmetrical speed bump proposal.[11]

Since before and after it became an exchange, IEX has sought to design its market in a way that creates a transparent and level playing field where both investors and market professionals can participate and have confidence in the fairness of the system. In general, these aspects of our market involve ways to counter or reduce speed advantages that can harm investors by exposing them to execution at stale prices when their orders are traded against by traders with more complete and timely information about market prices.

These aspects include the use of a so-called ''speed bump,'' a symmetrical delay mechanism consisting of a length of coiled optical fiber, which, together with the physical distance from the location where members connect to the IEX systems where orders are matched, delays all incoming orders by 350 microseconds. The speed bump is designed to protect non-displayed orders, typically placed on behalf of institutional investors, that are ''pegged'' to a given price, often the midpoint of the NBBO, *i.e.,* the Midpoint Price.[12] The speed bump allows IEX's matching engine to update the prices of resting pegged orders in line with price changes on other markets to lessen the possibility of adverse selection when a new Midpoint Price is established. By repricing the order based on the current market, resting orders are less likely to be executed at stale prices when incoming orders by other exchange participants with the advantage of a more current view of market prices seek to execute against resting pegged orders on IEX.

The speed bump works together with certain non-displayed order types that are designed to provide further protection to non-displayed orders and encourage brokers to place those orders on IEX. These include Discretionary Peg[13] (''DPeg''), which, in its current iteration, is an order pegged to trade at one minimum price variation, or ''tick,'' below the national best bid (''NBB''),[14] in the case of buy orders, or one tick above the national best offer (''NBO''),[15] in the case of sell orders, unless the submitter of the order has specified a limit price that is less aggressive than this default resting price. For most stocks, the minimum tick under Commission rules is one cent. In most circumstances, DPeg orders can also trade at a more aggressive price (one more favorable to the counterparty), but only to the midpoint, when there are incoming orders that are willing to trade at that price.

Similarly, the primary peg[16] (''PPeg'') order type is pegged to one tick below the NBB, for a buy order, and one tick above the NBO, for a sell order, but is also available to trade at a price up to the NBB or down to the NBO, unless further restricted by the order's limit price. When DPeg and PPeg orders are eligible to trade at prices more aggressive than their default prices, they are said to be ''exercising discretion'' to trade at these more aggressive prices.

In addition, IEX uses a proprietary mathematical calculation, the crumbling quote indicator (''CQI''), to determine when its pegged order types are eligible to exercise discretion. The CQI is a transparent formula, codified in IEX's rulebook, designed to predict whether a particular quote is unstable or ''crumbling,'' meaning that the NBB is likely about to decline or the NBO is likely about to increase. As set forth in IEX Rule 11.190(g), the Exchange utilizes real time relative quoting activity of certain Protected Quotations[17] and a proprietary mathematical calculation (the ''quote instability calculation'') to assess the probability of an imminent change to the current Protected NBB to a lower price or Protected NBO to a higher price for a particular security (''quote instability factor''). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined quote instability threshold, the System[18] treats the quote as unstable and the CQI is on at that price level for up to two milliseconds (hereafter referred to as the ''quote instability determination price level'' or the ''CQI Price''). During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security.[19]

When IEX determines, pursuant to the CQI methodology, that the current market for a security is unstable—meaning there is a heightened probability of an imminent quote change at the NBB or NBO—IEX's System will prevent DPeg and PPeg orders on that side of the market from exercising discretion and trading at a price that is more aggressive than their default resting prices. In this way, IEX seeks to protect these orders from being executed at unfavorable prices during these very short periods of time when they face a high risk that the market price will immediately move against them, and IEX's System allows them to trade at more aggressive prices, with a higher probability of execution, in all other circumstances.

DPeg and PPeg orders have been widely adopted by a diverse group of IEX Members. During September 2019, such orders constituted 38% of overall IEX traded volume (DPeg volume was 35% and PPeg volume was 3%) and 55% of liquidity adding volume (DPeg volume was 49% and PPeg volume was 6%). 70 of 145 IEX Members traded using DPeg or PPeg orders (these Members represent 90% of the total volume traded on IEX), with 84% of this volume originating from full-service firms, 9% from proprietary trading

[10] *See supra* note 8, at 30283.

[11] *See* comments on Release No. 34–86168; File No. SR–CboeEDGA–2019–012 available at: *https://www.sec.gov/comments/sr-cboeedga-2019-012/srcboeedga2019012.htm.*

[12] *See* IEX Rule 1.160(t).

[13] *See* IEX Rule 11.190(b)(10). IEX has two other order types that are based on the DPeg order type: The Retail Liquidity Provider order and the Corporate Discretionary Peg order. *See* Rule 11.190(b)(14) and (16).

[14] The term ''NBB'' shall mean the national best bid, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b). *See* Rule 1.160(u).

[15] The term ''NBO'' shall mean the national best offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b). *See* Rule 1.160(u).

[16] *See* IEX Rule 11.190(b)(8).

[17] Pursuant to IEX Rule 11.190(g), references to ''Protected Quotations'' include quotations from the New York Stock Exchange LLC (''NYSE''); The Nasdaq Stock Market LLC (''Nasdaq''); NYSE Arca, Inc. (''NYSE Arca''); Nasdaq BX, Inc. (''Nasdaq BX''); Cboe BZX Exchange, Inc. (''Cboe BZX''); Cboe BYX Exchange, Inc. (''Cboe BYX''); Cboe EDGX Exchange, Inc. (''EDGX''); and EDGA.

[18] *See* IEX Rule 1.160(nn).

[19] IEX has revised the CQI formula twice since its exchange launch in order to enhance the accuracy of the CQI in predicting quote instability and increasing the protection provided to pegged orders.

firms, and 7% from agency firms.[20] IEX believes that this usage evidences that a large range of market participants with diverse business models have a high degree of confidence in the utility of the CQI formula.

All of these aspects of IEX's design—the speed bump, the pegged order types, and the CQI—are designed to work together to provide better execution opportunities for these orders, which are favored by institutional investors, by protecting them from being executed at inferior prices in narrow time windows when the NBBO is in transition. As described further below, these features have provided substantial benefits in terms of execution outcomes to investors and other participants using these IEX order types.

In addition to these other features of IEX's market, since January 1, 2018, IEX has imposed an additional fee on Members that send more than a certain threshold of their orders to take liquidity during periods when the CQI is on (the ''CQ Remove Fee''). The CQ Remove Fee is intended to incentivize participants to send orders to provide liquidity to IEX by reducing the volume of orders involving trading strategies that seek to exploit information advantages while the NBBO is in transition. The CQ Remove Fee has resulted in an incremental reduction in the use of such strategies on IEX. IEX believes the limited impact from the fee is a result of the fact that the potential profits from the use of such strategies substantially exceed the profits lost from the CQ Remove Fee.[21]

The innovations IEX has introduced have succeeded in providing new execution opportunities for investors, particularly through the use of the pegged order types described above, and they have provided IEX participants with opportunities for improved executions compared to other venues.[22] At the same time, IEX believes that the willingness of market participants to provide liquidity through other order types, including displayed orders, is substantially negatively affected by the trading strategies described above. Without an order type that leverages the protective features of the CQI, 24% of displayed volume on IEX is executed when the CQI is on, compared to only 3% of nondisplayed volume during September 2019. As discussed in detail below, IEX trading data reveals that liquidity-providing orders that are executed while the CQI is on are subject to significant differences in short term markouts,[23] compared to liquidity-providing orders executed when the CQI is off, and the significant volume of orders that are sent during these very small time intervals (on IEX as well as other exchanges) accentuates this impact.

Maker-Taker exchanges use rebate payments to induce participants to post quotes and other resting orders on exchanges notwithstanding these negative impacts. A variety of significant concerns have been raised regarding the effect of paying rebates as compensation to a relatively small number of liquidity providers, which include conflicts of interest, increased market fragmentation, effectiveness, and adding unnecessary complexity to overall equity market structure by incentivizing market participants to attempt to continually readjust their order routing to navigate a multitude of constantly changing transaction fee schedules.[24] The Commission has adopted a transaction fee pilot, to assess these concerns about existing exchange fee structures, which is designed to test potential improvements to market quality from reducing access fees and prohibiting rebates on all exchanges.[25] Moreover, the substantial use of ''Taker-Maker'' exchange fee models, which charge fees to liquidity providing orders and pay rebates to liquidity taking orders, evidences that exchanges can compete for displayed order flow without paying rebates.

In view of these factors, the Exchange believes that it is appropriate to also leverage the CQI to expand the IEX protective design to displayed and non-pegged non-displayed limit orders.[26] The Exchange further believes that providing such protection would incentivize the entry of liquidity providing orders on IEX by protecting such orders from adverse selection by market participants leveraging sophisticated latency arbitrage strategies to exploit informational advantages when IEX's probabilistic model determines that the market appears to be moving adversely to them.

Accordingly, IEX is proposing the D-Limit order type as an alternative means of encouraging market makers and other participants, including institutional investors, to provide liquidity, by adjusting the price of these orders in the narrow time windows when the CQI is on, to better protect them from being ''picked off'' during those intervals. IEX believes that D-Limit represents a logical extension of its efforts to date to create a trading platform that encourages participation by investors and market professionals and maximizes opportunities for investors to trade at a fair price. D-Limit orders would be available to all IEX Members in a fair and nondiscriminatory manner.

As discussed further below, IEX believes that exchanges must be allowed to innovate in narrowly targeted ways to protect resting orders from being unfairly exploited by information asymmetries. IEX also believes such measures are important to enhance the value and integrity of protected quotes generally, and that D-Limit will benefit market quality by leading to deeper liquidity, displayed and non-displayed, and increased opportunities for participants interacting with this liquidity to receive favorable executions.

Proposal

The Exchange proposes to amend IEX Rule 11.190(b)(7), which is currently reserved, to add a D-Limit order which may be a displayed or non-displayed limit order that upon entry and when posting to the Order Book,[27] is priced to be equal to and ranked at the order's limit price,[28] but will be adjusted to a less-aggressive price during periods of quote instability, as defined in IEX Rule 11.190(g), as described more fully

[20] *See infra* note 58 and accompanying text for a discussion of IEX's classification of its Members' logical order entry ports.

[21] The Exchange is effectively limited in setting the CQ Remove Fee by Rule 610(c) of Regulation NMS. 17 CFR 242.610(c).

[22] *See, e.g.,* Wah, Elaine, et al. ''A Comparison of Execution Quality across U.S. Stock Exchanges,'' (April 19, 2017), available at *https://iextrading.com/docs/A%20Comparison%20of%20Execution%20Quality%20across%20U.S.%20Stock%20Exchanges.pdf.*

[23] The term markouts refers to changes in the midpoint of the NBBO measured from the perspective of either the liquidity providing resting order or liquidity removing taking order over a specified period of time following the time of execution.

[24] *See generally,* transcript of Commission ''Roundtable on Market Data Products, Market Access Services, and their Associated Fees'' (October 25, 2018) available at: *https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf.*

[25] *See* Securities Exchange Act Release 84875 (December 19, 2018); 84 FR 5202 (February 20, 2019).

[26] IEX currently allows limit orders to be either ''displayed, non-displayed, or partially displayed.'' *See* IEX Rule 11.190(a)(1). Displayed orders must be limit orders, *see* IEX Rule 11.190(b)(1), but non-displayed orders can be either a market, limit, or pegged order. *See* IEX Rule 11.190(b)(3). Furthermore, pegged orders can be submitted with or without a limit price, with the exception of Market Maker Peg orders, which must be limit orders. *See* IEX Rule 11.190(b)(8), (9), (10), (13), and (16).

[27] *See* IEX Rule 1.160(p).

[28] A non-displayed D-Limit order with a limit price more aggressive than the Midpoint Price will be subject to the Midpoint Price Constraint and be booked and ranked on the Order Book at a price equal to the Midpoint Price pursuant to IEX Rule 11.190(h)(2).

below. Otherwise, a D-Limit order will operate in the same manner as a displayed or non-displayed limit order, as applicable.

As proposed, if upon entry of a D-Limit buy (sell) order the CQI is on and the order has a limit price equal to or higher (lower) than the quote instability determination price level (*i.e.,* the CQI Price), the price of the order will be automatically adjusted by the System to one (1) MPV [29] lower (higher) than the CQI price. Similarly, when unexecuted shares of a D-Limit buy (sell) order are posted to the Order Book, if a quote instability determination is made and such shares are ranked and displayed (in the case of a displayed order) by the System at a price equal to or higher (lower) than the CQI Price, the price of the order will be automatically adjusted by the System to one (1) MPV lower (higher) than the CQI Price. A D-Limit order that is subject to an automatic adjustment will not revert to the price at which it was previously ranked and displayed (in the case of a displayed order). Once the price of a D-Limit order that has been posted to the Order Book is automatically adjusted by the System, the order will continue to be ranked and displayed (in the case of a displayed order) at the adjusted price, unless subject to another automatic adjustment, or if the order is subject to the price sliding provisions of IEX Rule 11.190(h). When the price of a D-Limit order is adjusted the order will receive a new time priority. If multiple D-Limit orders are adjusted at the same time, their relative time priority will be maintained. Further, when the price of a D-Limit order is adjusted, the Member that entered the order will receive an order restatement message from the Exchange notifying the Member of the price adjustment.[30]

D-Limit orders are subject to the price sliding provisions of IEX Rule 11.190(h), as noted above. This provision provides for price sliding in the event of a locked or crossed market, to enforce the Midpoint Price Constraint,[31] to comply with the display or execution requirements for a short sale order not marked short exempt during a Short Sale Period,[32] or to comply with the Limit Up-Limit Down Price Constraint.[33] As set forth in IEX Rule 11.190(h), an order that has been subject to price sliding will be repriced back to its more aggressive limit price when the market condition changes such that the condition necessitating the price sliding is no longer applicable.[34]

Pursuant to proposed IEX Rule 11.190(b)(7), a D-Limit order:

(A) Must be submitted with a limit price.

(B) May have a TIF of DAY, GTX, SYS or GTT.

(C) Is not eligible for routing pursuant to IEX Rule 11.230(b) and (c)(2).

(D) May not be an ISO.[35]

(E) Is eligible to trade only during the Regular Market Session.[36] A D-Limit order marked with a TIF of DAY that is submitted to the System before the opening of the Regular Market Session will be queued by the System until the start of the Regular Market Session; a D-Limit order marked with a TIF other than DAY will be rejected when submitted to the System during the Pre-Market Session.[37] A D-Limit order submitted into the System after the closing of the Regular Market Session will be rejected.

(F) May not be a minimum quantity order.[38]

(G) May be an odd lot, round lot, or mixed lot. However, a D-Limit order marked for display will not be displayed unless it is at least one round lot. If a D-Limit order marked for display is submitted with, or decremented either by execution or the User order amendment to an order quantity of less than one round lot, it will be treated as an odd lot order which is, by definition, non-displayed and will receive a new time stamp, pursuant to IEX Rule 11.220(a)(3).

(H) May not be a Reserve Order.[39]

(I) Displayed Discretionary Limit orders are not eligible to be invited by the System to Recheck as described in IEX Rule 11.230(a)(4)(D).

(J) Discretionary Limit orders are subject to the Price Sliding provisions of IEX Rule 11.190(h).

The proposed rule change would thus extend the protective features of the CQI to displayed and non-displayed D-Limit orders to protect such orders from potential adverse selection by preventing them from trading at a price that IEX's CQI formula predicts is unstable and thus imminently stale.

The following examples illustrate the operation of the price adjustment functionality of D-Limit orders: [40]

1. The PBBO [41] in XYZ is 10.05–10.10 and a displayed D-Limit order to buy with a limit price of 10.05 is resting on the IEX Order Book at its limit price. A quote instability determination is made at the PBB [42] of 10.05. Because the limit (and displayed) price of the D-Limit order is equal to the CQI Price, the price of the order is adjusted to 10.04.

2. The PBBO in XYZ is 10.05–10.10 and a displayed D-Limit order to buy with a limit price of 10.04 is resting on the IEX Order Book at its limit price. A quote instability determination is made at the PBB of 10.05. Because the limit and displayed price of the D-Limit order is less than the CQI Price, the price of the order is not adjusted.

3. Following the order adjustment in Example 1, the PBB reverts to 10.05. The order remains displayed at its adjusted limit price of 10.04 because a D-Limit order that has been adjusted continues to be ranked and displayed at its adjusted price, regardless of a change in the PBB, unless subject to another automatic adjustment.

4. Following the order adjustment in Example 1, a new quote instability determination is made at the PBB of 10.04. Because the limit and displayed price of the D-Limit order is equal to the CQI Price, the price of the order is adjusted again to 10.03.

5. Following the order adjustment in Example 1, the PBB reverts to 10.05 and a new quote instability determination is made at the PBB of 10.05. Because the limit and displayed price of the D-Limit order is lower than the CQI Price, the price of the order is not adjusted.

6. The PBBO in XYZ is 10.05–10.10 and a non-displayed D-Limit order to buy with a limit price of 10.06 is resting on the IEX Order Book at its limit price. A quote instability determination is made at the PBB of 10.05. Because the limit price of the D-Limit order is higher than the CQI Price, the price of the order is adjusted to 10.04.

7. The PBBO in XYZ is 10.05–10.10 and a non-displayed D-Limit order to buy with a limit price of 10.05 is resting on the IEX Order Book at its limit price. A quote instability determination is made at the PBB of 10.05. Because the limit price of the D-Limit order is equal to the CQI Price, the price of the order is adjusted to 10.04. Subsequently, the PBB moves to 10.03 and a new quote instability determination is made at the PBB of 10.03. The price of the order is adjusted to a price of 10.02.

8. The PBBO in XYZ is 10.05–10.10 and the quote instability determination is in effect for the PBB at 10.05. A D-Limit order to buy XYZ with a limit price of 10.05 enters the IEX Order Book. Because the limit price of the order is equal to the CQI Price in effect, the price of the order is adjusted to and booked at 10.04.[43]

9. The PBBO in XYZ is 10.05–10.10 and the quote instability determination is in

[29] *See* IEX Rule 11.210.

[30] A restatement notice is an automated message from the Exchange System informing the Member that the price of its order has been adjusted.

[31] *See* note 28 *supra.*

[32] *See* IEX Rule 11.290(d).

[33] *See* IEX Rule 11.190(h)(5).

[34] *See* IEX Rule 11.190(h) for a complete description of the price sliding provisions. *See also* note 28 *supra* regarding applicability of the Midpoint Price Constraint.

[35] *See* IEX Rule 11.190(b)(12).

[36] *See* IEX Rule 1.160(gg).

[37] *See* IEX Rule 1.160(z).

[38] *See* IEX Rule 11.190(b)(11).

[39] *See* IEX Rule 11.190(b)(2).

[40] The following examples all describe D-Limit buy orders. Each of the examples also applies to a D-Limit sell order, except that any price adjustments to a D-Limit sell order would adjust the order price to one MPV above the CQI Price in effect.

[41] The term ''PBBO'' refers to the national best bid or offer that is a protected quotation, determined as set forth in IEX Rule 11.410(b). *See* IEX Rule 1.160(cc).

[42] The term ''PBB'' refers to the national best bid that is a protected quotation, determined as set forth in IEX Rule 11.410(b). *See* IEX Rule 1.160(cc).

[43] The order is not executable on entry at 10.04 because of the Midpoint Price Constraint. Pursuant to IEX Rule 11.190(h)(2), a non-displayed limit order posting to the Order Book which has a limit price more aggressive than the Midpoint Price will be booked and ranked on the Order Book non-displayed at a price equal to the Midpoint Price.

effect for the PBB at 10.05. A D-Limit order to buy XYZ with a limit price of 10.04 enters the IEX Order Book. Because the limit price of the order is lower than the CQI Price in effect, the price of the order is not adjusted.[44]

10. The PBBO in XYZ is 10.05–10.10 and the quote instability determination is in effect for the PBB at 10.05. A D-Limit order to buy XYZ with a limit price of 10.06 enters the IEX Order Book. Because the limit price of the order is higher than the CQI Price in effect, the price of the order is adjusted to and booked at 10.04.[45]

11. The PBBO in XYZ is 10.05–10.10 and the quote instability determination is in effect for the PBB at 10.05. The PBB crumbles to 10.04 but the quote instability determination is still in effect at 10.05. A D-Limit order to buy XYZ with a limit price of 10.05 enters the IEX Order Book. Because the limit price of the order is equal to the CQI Price in effect, the price of the order is adjusted to and booked at 10.04.[46]

12. The PBBO in XYZ is 10.04–10.10 and the quote instability determination is in effect at 10.05 (the prior PBB). A D-Limit order to buy XYZ with a limit price of 10.05 enters the IEX Order Book. Because the limit price of the order is equal to the CQI Price in effect, the price of the order is adjusted to and booked at 10.04.[47]

13. The PBBO in XYZ is 10.04–10.10 and the quote instability determination is in effect at 10.05 (the prior PBB). A D-Limit order to buy XYZ with a limit price of 10.06 enters the IEX Order Book. Because the limit price of the order is higher than the CQI Price in effect, the price of the order is adjusted to and booked at 10.04.[48]

14. The PBBO in XYZ is 10.04–10.10 and the quote instability determination is in effect at 10.05 (the prior PBB). A D-Limit order to buy XYZ with a limit price of 10.04 enters the IEX Order Book. Because the limit price of the order is lower than the CQI Price in effect, the price of the order is booked at 10.04.[49]

D-Limit orders would be available to all Members on a fair and impartial basis and no particular technology or access to high speed connectivity or market data is necessary to obtain the protective benefits of a D-Limit order. The Exchange will adjust the price of a D-Limit order based on the transparent, rule-based CQI formula. In contrast, the use of ''asymmetric'' speed bumps (those imposed only on the taker of liquidity) in order to provide a benefit to resting orders, requires access to sophisticated technology, connectivity and market data in order to cancel or adjust an order in the brief time period that an incoming order is delayed.

IEX is not proposing any changes to IEX Rule 11.240(c) which specifies that the System operates as an ''automated market center'' and displays ''automated quotations'' within the meaning of Regulation NMS, except in the event that a systems malfunction renders the System incapable of displaying automated quotations. Automated quotations of an automated trading center are protected quotations pursuant to Rule 600(b)(62) of Regulation NMS[50] and entitled to trade-through protection pursuant to Rule 611 of Regulation NMS[51] (the ''Order Protection Rule''). Consequently, displayed D-Limit orders will qualify as automated quotations within the meaning of Regulation NMS (except in the event that a systems malfunction renders the System incapable of displaying automated quotations).[52]

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[53] of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act[54] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes the proposed rule change is consistent with the protection of investors and the public interest because it is designed to protect resting D-Limit orders from adverse selection associated with latency arbitrage by limiting execution to one MPV lower than the CQI Price (for buy orders) or one MPV higher than the CQI Price (for sell orders) when the Exchange's probabilistic model identifies that the NBB or NBO appears to be moving adversely to them, thereby reducing the potential to execute at an imminently stale price.

In addition, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it is designed to incentivize the entry of additional resting orders, including displayed orders on the Exchange, thereby enhancing price discovery and the overall liquidity profile on the Exchange to the benefit of all market participants. Based on market data analysis during September 2019, the Exchange identified that there are significant differences in short term markouts (and pro forma profit and loss)[55] for resting and taking orders between executions when the CQI is on and off, regardless of whether the NBB (NBO) moves lower (higher) within two milliseconds of the Exchange's determination of quote instability. Specifically, when the CQI is on, liquidity removing orders that execute on IEX (trading with a liquidity providing order resting on the Order Book, including but not limited to Discretionary Peg and primary peg orders) experience positive price markouts one second after the trade on a share basis 76% of the time, compared to 23.5% of the time when the CQI is off. Correspondingly, resting liquidity providing orders that trade when the CQI is on experience negative price markouts one second after the trade 76% of the time, compared to 23.5% of the time when CQI is off. Similarly, 55.9% of all orders received when the CQI is on (whether or not executed on IEX) arrive immediately prior to a favorable price move (based on one second markouts), compared to 19.5% of orders received when the CQI is off.

Moreover, the breakdown of orders entered and shares removed when the CQI is on or off evidences that certain trading strategies appear to involve entering liquidity taking orders targeting resting orders at prices that are likely to imminently move adversely from the perspective of the resting order. Across all approximately 8,000 symbols available for trading on IEX, the CQI is on only 1.64 seconds per symbol per day on average (0.007% of the time during regular market hours),[56] but 33.7% of marketable orders[57] are received during those time periods, which indicates that certain types of trading strategies are seeking to

[44] The order is not executable on entry. *See supra* note 43.

[45] The order is not executable on entry. *See supra* note 43.

[46] The order is not executable on entry. *See supra* note 43.

[47] The order is not executable on entry. *See supra* note 43.

[48] The order is not executable on entry. *See supra* note 43.

[49] The order is not executable on entry. *See supra* note 43.

[50] 17 CFR 242.600(b)(62).

[51] 17 CFR 242.611.

[52] 17 CFR 242.602(a)(3)(i).

[53] 15 U.S.C. 78f.

[54] 15 U.S.C. 78f(b)(5).

[55] For purposes of this analysis, a pro forma profit or loss is calculated as the difference between the midpoint of the NBBO at the time of the execution compared to one second after.

[56] On a volume weighted basis, the CQI is on for 5.9 seconds per day per symbol, 0.025% of the time during regular market hours. IEX plans to file a proposed rule change with the Commission shortly to incrementally optimize and enhance the effectiveness of the quote instability calculation in determining whether the CQI is on. Based on a modeling analysis, IEX estimates that the updated calculation will result in the CQI being on 0.009% of the time during regular market hours, on average, and incrementally increase the expected number of CQI determinations by approximately 20%.

[57] An order is considered marketable for this analysis if it was a market order or its limit price is at or more aggressive than the contra-side quotation.

aggressively target liquidity providers during periods of quote instability.

Further, based upon IEX's classification of its Members' logical order entry ports (also known as ''sessions'') as originating from proprietary trading firms, full service broker-dealers, or agency broker-dealers,[58] proprietary trading firms are more likely to seek to trade against IEX resting orders while the CQI is on, while sessions classified as full-service and agency are more likely to seek to trade against IEX resting orders during the remainder of the day. Within the two millisecond periods following CQI determinations, proprietary trading firms submit 6.8 times as many marketable-to-mid shares (*i.e.,* shares priced at least as aggressively as the midpoint and eligible to trade) compared to full-service and agency firms; while outside of those two millisecond periods, the situation is reversed, with full-service and agency firms submitting 3.4 times as many marketable-to-mid shares compared to proprietary trading firms (based on daily averages from September 2019).

When looking at the impact of trading when the CQI is on and off for non-pegged limit orders, the data strongly supports that such orders are systematically subjected to adverse impacts of latency arbitrage strategies. During September 2019, non-pegged limit orders accounted for 17% of volume traded on IEX (13% of traded volume was from displayed limit orders). In the aggregate, these orders experienced significant differences in short term markouts (and pro forma profit and loss) between executions when the CQI is on and off, regardless of whether the NBB (NBO) moves lower (higher) within two milliseconds of the Exchange's determination of quote instability. Resting limit orders that trade when the CQI is on experience negative price markouts one second after the trade 76% of the time, compared to 34% of the time when CQI is off. In addition, for marketable incoming orders to take liquidity that arrive when IEX has a displayed quote, 21% arrive during the 0.007% of the trading day when the CQI is on.

Moreover, for displayed limit orders that added liquidity during September 2019, the disparity in markouts between such orders that traded when the CQI was on versus off was material and evident of latency arbitrage.[59] For such orders that traded when the CQI was on, the average markouts were negative $.0036 per share ten milliseconds after trade time. In contrast, when the CQI was off, the average markouts were positive $.0045 at 10 milliseconds, a performance difference of $.0081 per share at 10 milliseconds post trade. From one second through five minutes the performance difference between CQI on vs CQI off trades was never smaller than $.0048 per share.

The Exchange believes that this data is particularly significant and evidences that Members entering liquidity taking orders when the CQI is on appear to be able to engage in a form of latency arbitrage by leveraging fast proprietary market data feeds and connectivity along with predictive strategies to chase short-term price momentum and successfully target resting orders at unstable prices. IEX believes that these types of trading strategies, with concentrated and aggressive tactics during moments of quote instability, are detrimental to the experience of other IEX participants. As further discussed below, IEX believes that such trading strategies create disparate burdens on resting orders, particularly limit orders that do not currently benefit from the CQI or the speedbump.

The Exchange believes that IEX data thus demonstrates that displayed and non-displayed limit orders are subject to systematic adverse impacts from latency arbitrage strategies. The Exchange believes that these adverse impacts constitute an implicit tax on liquidity providers that operates to disincentivize market participants from entering limit orders that contribute to meaningful price discovery. Other exchanges use rebates and volume tiers to essentially compensate market makers and other liquidity providers for posting aggressive limit orders.[60] As discussed above, IEX believes that these pricing schemes can contribute to a number of conflicts of interest and market distortions including, among others, conflicts of interests, excess intermediation and potential adverse selection, market fragmentation, complexity, the proliferation of new order types to enable avoidance of fees, and elevated fees to subsidize rebates.[61] In contrast, IEX seeks to incentivize liquidity providing orders through superior execution quality, but this incentive can be undercut by trading strategies that target resting orders during periods of quote instability. Thus, IEX believes that additional approaches to incentivize displayed liquidity are warranted, and that the D-Limit order type is one reasonable approach to compete with other venues for liquidity providing order flow without relying on rebates and tiered pricing. As discussed above, the widespread adoption of DPeg and PPeg order types that utilize the CQI formula evidences that a diverse group of Members have confidence in the utility of the CQI and its protective features. IEX believes that, as a result, a similarly diverse group of Members are likely to use D-Limit orders.

The Exchange further believes that the proposed rule change is consistent with the Act because it would be available to all Members on a fair, equal and nondiscriminatory basis. All Members, regardless of their technological sophistication, can enter D-Limit orders and benefit from their protection against latency arbitrage. More specifically, a Member using a D-Limit order would not need to be able to have the technological capability (*e.g.,* through the use of high speed connectivity and market data purchased from other exchanges) to identify that the quote is unstable and send an order message to cancel or reprice its resting order faster than another Member with such technological capability can trade against the order. The Exchange will adjust the price of a D-Limit order based on the transparent, rule-based CQI formula.

IEX believes the fact that the D-Limit order is specifically designed to disincentivize trading strategies seeking to take liquidity while the CQI is on does not amount to ''unfair discrimination between customers, issuers, brokers, or dealers,'' within the meaning of the Act. The existing equity market structure is replete with

[58] On a best efforts basis, IEX classifies proprietary trading firms as those that are trading for their own account rather than acting in an agency capacity for an independent beneficial owner. Agency broker-dealers are firms that trade on behalf of customers that are independent beneficial owner but do not commit capital to facilitate their customers' orders. Full-service broker-dealers are also trading on behalf of an independent beneficial owner but they also have the ability to commit capital to facilitate a customer order.

[59] *See* Stockland, Eric. ''Modern Day Latency Arbitrage: Predicting Price Changes,'' (April 10, 2017), available at *https://medium.com/boxes-and-lines/modern-day-latency-arbitrage-predicting-price-changes-738edc25a28d.*

[60] *See, e.g.,* NYSE Price List 2019, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; see also* Nasdaq General Equity and Options Rule, Equity 7 Section 118(a)(1) available at *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F2%5F2&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dllcrules%2F;* Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[61] *See* Wah, Elaine, ''Gone in Sixty Seconds'' (September 21, 2018) available at: *https://medium.com/boxes-and-lines/gone-in-sixty-seconds-22094adeb0de.*

examples of exchange rules that seek to incentivize, disincentivize, or deter various types of trading activity. Maker-Taker price structures, which are used by all the largest exchanges, by their nature provide more favorable exchange economics to liquidity-providing compared to liquidity-taking activity. Nasdaq charges ''excess order fees'' on certain members that have a relatively high ratio of orders entered away from the NBBO to orders that are executed, subject to carve-outs for certain low-volume members and certain registered market makers.[62] Nasdaq justified the fee based on its design to improve the quality of displayed liquidity to the benefit of all market participants.[63]

Further, IEX's CQI Remove Fee is expressly designed to benefit and incentivize the placing of resting, non-displayed orders by limiting the profitability of the same trading strategies that motivate the current proposal. Moreover, IEX's existing speed bump is designed to limit executions of non-displayed, pegged orders before the Exchange has the ability to update and reprice those orders based on its own view of market prices. In approving the speed bump, the Commission found that:

> IEX's [speed bump] is thus narrowly designed to allow IEX to update the prices of non-displayed resting pegged orders so that they can achieve their intended purpose—pricing that is accurately benchmarked to the NBBO. . . . The Commission thus finds that IEX's ability to update the prices of resting pegged orders . . . is not designed to unfairly discriminate among members to the detriment of investors or the public interest and is intended to benefit investors that post pegged orders.'' [64]

The Exchange believes that it is similarly not unfairly discriminatory to use a narrowly tailored means to provide protection to and encourage the placing of displayed limit orders on IEX by investors and market makers by providing them a measure of protection from the trading strategies documented above. The Exchange further believes that the proposed rule change is consistent with the protection of investors and the public interest because the circumstances under which a D-Limit order will be adjusted are narrowly tailored, transparent and predictable. As discussed above, the CQI is only on for an extremely small percentage of the trading day and is designed to protect impacted order types during these very narrow windows of time. Even if IEX enhances the CQI formula (as noted above), the nature of the CQI will remain intact—it will continue to focus on protecting impacted orders against latency arbitrage trading strategies during very narrow windows of time. Even though D-Limit orders may not be accessible to other market participants during these narrow timeframes, the Exchange does not believe that this impact is unfairly discriminatory because during the vast majority of time D-Limit quotes will be accessible. Moreover, the purpose of limiting such accessibility is to incentivize liquidity providers to post displayed orders on IEX by protecting them as discussed above. To the extent that such incentive is successful, all market participants, including takers of liquidity, will benefit.

The CQI formula used to determine whether and when to adjust an order's price is codified in IEX Rule 11.190(g) and is, on average, on for only 0.007% of the trading day for each security. During the remaining 99.993% of the trading day, D-Limit orders would be available to trade at their resting price in the same manner as any other limit order. In contrast, whether an order will be cancelled or adjusted in an exchange with an asymmetrical speed bump would not be transparent or predictable since such changes are determined exclusively by the market participant that entered the order. Further, the price of a D-Limit order would only be adjusted when the CQI formula predicts that the relevant quote is unstable while an asymmetrical speed bump enables a market participant to cancel or adjust the price of an order on an *ad hoc* basis for any reason and frequency.

Notwithstanding that D-Limit orders will be subject to price adjustment when the CQI is on, IEX believes that this functionality is consistent with the ''firm quote'' requirements of Regulation NMS Rule 602(b) [65] in that it will not result in a meaningful amount of quote ''fading'' compared to the quote fading, both explicit and implicit, that exists and is permitted today. This quote fading falls into three broad categories.

First, several other exchanges offer displayed order types that are pegged to the NBBO and thus are subject to price adjustments, including to a less aggressive price as the NBBO changes (*i.e.,* explicit quote fading). EDGA, for example, offers a MidPoint Discretionary order that is pegged to the same-side NBB or NBO with discretion to execute at more aggressive prices up to and including the midpoint of the NBBO or the order's limit price.[66] A MidPoint Discretionary order can be displayed or non-displayed. In the case of a displayed MidPoint Discretionary order, the order's display price is adjusted in response to changes in the NBB (for buy orders) or NBO (for sell orders) which can result in a displayed order being adjusted to a less aggressive price than it was previously displayed at if the NBB or NBO moves to a less aggressive price. Thus, displayed MidPoint Discretionary orders are subject to quote fading if the NBB or NBO, as applicable, moves to a less aggressive price. IEX believes that this price adjustment functionality is substantially similar to the proposed D-Limit price adjustment functionality in that both order types will adjust to a less aggressive price in response to certain objective criteria. The displayed price of a MidPoint Discretionary order will move to a less aggressive price if the NBB or NBO moves to a less aggressive price, while the displayed price of a D-Limit order will move to a less aggressive price if IEX's CQI formula predicts that the NBB or NBO is likely to move to a less aggressive price.

EDGA adopted the MidPoint Discretionary order through an immediately effective rule filing.[67] Four years later, EDGA's affiliate, EDGX filed an immediately effective rule filing to adopt a comparable MidPoint Discretionary order type, the displayed version of which is also pegged to the same-side NBB or NBO and thus subject to price adjustments to a less aggressive price when the NBBO moves to such a price.[68] Neither the EDGA nor EDGX rule filings raised any issues or concerns regarding quote fading of displayed MidPoint Discretionary orders. In addition, Nasdaq offers a discretionary order type for which the display price can be pegged to a floating price range [69] and NYSE Arca and NYSE each offers a primary pegged order type that has a

[62] *See* Nasdaq General Equity and Options Rule, Equity 7 Section 118(m).

[63] *See* Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (SR–NASDAQ–2012–055).

[64] Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41157 (June 23, 2016).

[65] 17 CFR 242.602(b).

[66] *See* EDGA Equity Rule 11.8(e).

[67] *See* Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–022) (Notice of Filing and Immediate Effectiveness to Amend EDGA Rules to Add the MidPoint Discretionary order). Two years later, in 2014, EDGA filed another rule change proposal to restructure its order type rules, including the MidPoint Discretionary order. *See* Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR–EDGA–2014–020).

[68] *See* Securities Exchange Act Release No. 84327 (October 1, 2018), 83 FR 50416 (October 5, 2018) (SR–CboeEDGX–2018–041).

[69] *See* Nasdaq Rule 4703(g) and Section 3.3.2 of Nasdaq's SUMO FIX Programming Specification for FIX 4.2 available at: *https://nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/fix_orders_sb.pdf.*

working price pegged to the same-side PBBO that must include a minimum of one round lot displayed.[70] Thus, these displayed pegged orders will also be adjusted to a less aggressive price when the same-side NBBO or PBBO, as applicable, moves to a less aggressive price. Similarly, the Commission's approval of a Nasdaq rule filing that includes adoption of its displayed discretionary order type does not include any discussion of potential quote fading issues.[71]

Data for September 2019 identified that there were approximately 5,500 volume-weighted average NBBO quote changes per symbol each day to a less aggressive price, compared to 5,427 volume-weighted average CQI determinations per symbol each day. IEX believes that this data evidences that D-Limit orders would be subject to a comparable number of changes to a less aggressive price as order types of other exchanges that peg to the near side NBBO or PBBO. And as discussed earlier, the CQI is on for only 1.64 seconds per symbol per day on average (0.007% of the time during regular market hours). Thus, IEX believes that this data supports that D-Limit, like the other exchanges' order types discussed above, is a narrowly tailored approach to provide for price adjustments to a less aggressive price for displayed orders pursuant to transparent and objective criteria. IEX believes that order types that are subject to repricing in response to an exchange determining that the NBBO has changed provide relevant precedent to repricing based on an exchange determining—pursuant to a transparent formula—that the NBBO is likely in the process of changing. In both cases, the repricing trigger is based on the NBBO. Although D-Limit orders would be repriced based on a transparent formula predicting an imminent change to the NBBO, rather than an exchange's determination that the NBBO has changed, the formula is narrowly tailored, designed to provide protection to market participants at all levels of sophistication, and codified in an IEX rule. And in both cases, the automatic change to the quote's price is explicitly intended to prevent executions at the originally displayed price. While the D-Limit proposal is novel in that it would provide an exchange with flexibility to reprice a displayed order, that flexibility is limited by the narrowly tailored CQI formula which itself is based on publicly available market data inputs and designed to protect liquidity providers from adverse selection by latency arbitrage trading strategies. Although such protection is designed to benefit liquidity providers, IEX believes that it will also benefit liquidity takers to the extent that the protection results in more resting liquidity available to liquidity takers. Consequently, IEX believes that its D-Limit order type proposal is approvable in accordance with this precedent.

Second, explicit quote fading exists on options exchanges, which offer several mechanisms to assist their members in managing risk and avoiding unintended executions. These mechanisms include risk management functionality that will automatically cancel resting orders and quotes based on member configured triggers such as total traded volume, percent traded volume, notional, net Delta or Vega exposure.[72] Notably, the automatic triggers appear to occur inside the exchange matching engine as opposed to requiring an order or cancel message from the member. Other exchanges also offer order and quote purge functionality that is designed to help members manage risk by providing dedicated (and effectively faster) ports to enter mass cancellations of multiple resting orders.[73] While IEX appreciates that market makers and other market participants posting displayed orders on options exchanges face materially greater risks than on equities markets, in view of the enormous number of individual option series available for quoting on options markets, IEX believes that they nonetheless provide relevant precedent for the risk management protections that D-Limit orders would provide. Market participants on both options and equities markets face significant challenges in cancelling or adjusting resting orders during times of market transition, in the face of other market participants engaged in sophisticated latency arbitrage efforts.

Third, an example of implicit quote fading is the manner in which other exchanges offer expensive, high-speed proprietary market data feeds and connectivity products that sophisticated market participants can leverage (along with predictive strategies) to not only target resting orders at unstable prices but to cancel or adjust resting orders more quickly than market participants not using such products and strategies can access their resting orders. As a result, when the market for a particular security is in transition, these sophisticated market participants are often able to cancel resting orders before less sophisticated market participants can access them.[74]

Thus, the Exchange believes that D-Limit orders will operate in a manner consistent with the ''firm quote'' requirements of Regulation NMS Rule 602(b)[75] and with existing order types, practices and precedent for protected quotations under the Order Protection Rule, as discussed above. D-Limit orders will be subject to execution at their ranked and displayed price (if displayable) at the time an incoming order reaches the Exchange for execution against the D-Limit order. Any price adjustment that occurs must occur before that point in time. This is similar to the EDGA displayed MidPoint Discretionary order type, which is subject to price adjustment to a less aggressive displayed price in response to NBBO changes. As a result, a displayed MidPoint Discretionary order may not be available for execution at its previously displayed price by the time an incoming order reaches the exchange for execution. Although a D-Limit displayed order would be adjusted to a less aggressive price than the NBBO, while a MidPoint Discretionary order will be adjusted to a less aggressive price that has become the same-side NBBO, in both cases the order is no longer available for execution at its previously displayed price. Further, options exchanges cancel quotes and displayed orders as a result of automated risk management functionality or enable cancellation through faster purge ports. In those

[70] *See* NYSE Arca Rule 7.31–E(h)(2) and NYSE Rule 7.31(h)(2).

[71] *See* Securities Exchange Act Release No. 75252 (June 22, 2015), 80 FR 36865 (June 26, 2015) (SR–NASDAQ–2015–024).

[72] *See, e.g.,* NYSE Arca Rule 6.40–O; Nasdaq ISE, LLC Options 3, Section 15(a)(3)(B); Nasdaq GEMX, LCC Options 3, Section 15(a)(3)(B); Nasdaq MRX, LLC Options 3, Section 15(a)(3)(B); Miami International Securities Exchange LLC (''MIAX'') Rule 519A; Nasdaq Rule 6130; Market Maker Risk Management Information Sheet for Nasdaq PHLX LLC (''Nasdaq PHLX'')/Nasdaq Options Market (''NOM'')/Nasdaq BX available at *https://www.nasdaq.com/docs/MarketMakerRiskManagement_PHLX_NOM_BX.pdf;* and Order Risk Management Information Sheet for Nasdaq PHLX/NOM/Nasdaq BX available at *https://www.nasdaq.com/docs/OrderRiskManagement_PHLX_NOM_BX.pdf.*

[73] *See* ''CBOE Purge Ports Frequently Asked Questions'' available at *https://cdn.cboe.com/resources/features/Cboe_USO_PurgePortsFAQs.pdf* and MIAX Rule 519C.

[74] *See, e.g.,* Malinova, Katya and Park, Andreas, ''Does High Frequency Trading Add Noise to Prices?'' (April 17, 2017) at 5, available at *https://www.rsm.nl/fileadmin/home/Department_of_Finance_VG5_/LQ2017/Malinova_Katya.pdf* (''When someone trades against their quotes on one venue, market makers rush to cancel their quotes on the other venue; if the market maker is very fast, it may be able to cancel the other quote before portions of a presumed multi-market order reach the other venue.'').

[75] *See supra* note 65.

situations, an order or quote that was previously displayed may not be available for execution by the time an incoming order reaches the exchange engine for execution. Moreover, all resting displayed orders may be unavailable in the event that another order or a cancel message is actionable prior to an incoming order reaching the engine, particularly when targeted by a sophisticated market participant engaged in latency arbitrage. And, as noted above, D-Limit orders will only be subject to price adjustment on average for 0.007% of the trading day, while the frequency of order cancellation or non-availability attributable to the existing exchange mechanisms and practices is determined by each market participant and not subject to any transparent limitations.

Further, IEX believes that displayed D-Limit orders would clearly qualify as ''automated quotations'' and therefore ''protected quotations'' under Regulation NMS, as discussed in the Purpose section. This conclusion is supported by two key considerations. First, IEX will not impose any delay on orders seeking to access D-Limit quotations beyond that which the Commission has already approved as consistent with the requirements for ''automated quotations.'' Second, adjusting prices of D-Limit displayed orders when the CQI is on is consistent with well-established precedent allowing other exchanges to automatically adjust the prices of protected quotations based on changes in overall market prices.

Under Rule 611 of Regulation NMS,[76] ''trade-through'' protections are extended to each protected bid or offer, which is defined in relevant part as ''an automated quotation that is the best bid or best offer of a national securities exchange.'' [77] The term ''automated quotation'' is defined as one that permits an incoming order to be marked as immediate-or-cancel (''IOC'') and that ''immediately and automatically'' executes an IOC order against the displayed quotation up to its full size, cancels any unexecuted portion, transmits to the sender a message indicating the action taken, and updates the quotation to reflect a change to its material terms.[78]

In approving IEX's exchange application, in response to arguments that federal securities regulations did not permit exchanges to impose any intentional delay, however small, on access to protected quotations, the Commission determined that IEX's 350 microsecond ''speed bump,'' which is applied to incoming and outbound messages, is ''well within the range of geographic and technological latencies that market participants experience today'' and therefore is ''comparable to—and even less than—delays attributable to other markets that currently are included in the NBBO.'' [79] The Commission thus concluded that, because IEX's speed bump is de minimis, its displayed quotes were immediately accessible and entitled to protected quotation status.[80]

Access to D-Limit quotes will not be subject to any delay beyond that to which all IEX's orders, displayed and non-displayed, are now subject. Accordingly, all D-Limit quotes will be immediately accessible under Regulation NMS.

Moreover, based on precedent, the fact that D-Limit displayed orders are subject to automatic repricing based on changes in market prices does not affect their status as protected quotations. For example, as discussed above, EDGA has an approved Midpoint Discretionary Order, which allows members to post displayed or non-displayed liquidity at the NBBO with discretion to execute at prices extending to and including the NBBO midpoint.[81] This EDGA order type automatically reprices the order based on changes in the NBBO (including to a less aggressive price), which benefits market participants that use the order type by helping to assure they are not executed at ''stale'' prices as well as to provide an opportunity for those orders to execute at a more aggressive NBBO when prices move in that direction. Similarly, various exchanges, including IEX, have received approval for ''market maker peg'' order types, which automatically reprice orders to allow market makers to meet their quoting obligations on those exchanges by automatically repricing those orders to within a designated percentage away from the NBBO.[82]

All these order types allow an exchange to automatically reprice resting orders based on determinations by the individual exchanges, in reading price updates from all exchanges, that the NBBO has changed. With respect to the automated quotation definition, a participant seeking to access a Midpoint Discretionary Order or market maker peg order displayed at any one time may fail to execute at that price if the order has been repriced by the exchange in the time between the transmission of the order and its receipt and processing by the exchange's systems. The potential that this will occur depends on various factors, including, among others, the distance between the point where the sender transmits the order to the exchange's systems and how quickly those systems update their understanding of the NBBO relative to the speed at which they process orders to take liquidity.

Because the use of a de minimis delay does not affect the ability of a displayed order to qualify as a protected quotation, there is no reason it should lose that status because its price is adjusted automatically by the exchange in response to changes in the NBBO, as is the case with the EDGA Midpoint Discretionary Order or the Nasdaq displayed discretionary order. IEX does not believe that there are any material differences in this regard between repricing that occurs in response to an exchange determining the NBBO has changed, and repricing based on an exchange determining—pursuant to a transparent formula—that the NBBO is likely in the process of changing. In either case, the automatic change to the quote's price is explicitly intended to prevent executions at the originally displayed price.

D-Limit orders are differentiated because they are explicitly designed to prevent executions in small time increments when the CQI is on. While this functionality discriminates against the use of trading strategies with more complete and timely information about market prices that intentionally seek to trade against resting orders during these time periods at stale prices, IEX believes that the D-Limit functionality is not unfairly discriminatory within the meaning of the Act because it is a narrowly tailored means of protecting, and thereby encouraging the use of, displayed quotations by both investors and market makers. Moreover, for the reasons discussed in the Purpose section, the Exchange believes that the proposed D-Limit order type may result in market participants entering more displayed and other resting limit orders on IEX, and at more aggressive prices, sizes and duration, which would benefit all market participants and thereby further the purposes of the Act.

Further, IEX believes that the specified order attributes for D-Limit orders are consistent with the Act because they are structured to facilitate efficient execution of D-Limit orders in a manner consistent with existing functionality and order types.

[76] 17 CFR 242.611.

[77] 17 CFR 242.600(b)(61)(iii).

[78] 17 CFR 242.600(b)(4).

[79] *See* note 64 *supra* at 41161.

[80] *See* note 64 *supra* at 41162.

[81] *See* note 66 *supra.*

[82] *See, e.g.,* IEX Rule 11.190(b)(13); Cboe BZX Rule 11.9(c)(15); Nasdaq Rule 4702(b)(7).

Additionally, IEX believes that the proposal is consistent with protection of investors and the public interest in that the D-Limit order type is designed to assist Members in obtaining best execution for their customers by providing an opportunity to execute at the NBBO, but limiting executions at the NBBO when the NBBO appears to be unstable, thereby reducing the potential to execute at an imminently stale price.

In conclusion, IEX believes that the proposed new D-Limit order type is consistent with the protection of investors and the public interest purposes of the Act in that it is designed to protect liquidity providers from certain adverse impacts of latency arbitrage strategies, and thereby incentivize the entry of additional resting orders, including displayed orders on the Exchange, thus enhancing price discovery and the overall liquidity profile on the Exchange to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness by incentivizing the entry of increased liquidity. With regards to inter-market competition, other exchanges are free to adopt similar order types to the extent that the proposed changes pose a competitive threat to their business. In this regard, the Exchange notes that NYSE American LLC (''NYSE Amex'') previously adopted a rule copying an earlier iteration of the Exchange's Discretionary Peg order type and quote stability calculation.[83]

In addition, the Exchange believes that the proposed rule change will enhance its ability to compete with alternative trading systems (''ATSs''). In this regard, IEX believes that a meaningful segment of market participants choose to rest orders on non-displayed ATSs in order to obtain protection from latency arbitrage strategies. As opposed to exchanges, ATSs can be structured to enable counter-party selection so that participants can choose to avoid interacting with certain counterparties deemed to be undesirable.[84] The Exchange believes that counter-party selection is important to some of these market participants, in part to avoid being subject to adverse latency arbitrage. While the proposed rule change will not enable counter-party selection, IEX believes that to the degree it is successful in reducing the impact of latency arbitrage strategies targeting resting orders at stale prices, it may reduce the need for counter-party selection and thereby incentivize such market participants to post displayed and other limit orders on IEX. Accordingly, the Exchange also believes that the proposed rule change will not result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

With regards to intra-market competition, D-Limit orders will be available to all Members on a fair, impartial and nondiscriminatory basis. While the proposed rule change is designed to provide certain protections to limit orders, all Members are eligible to enter D-Limit orders on the same terms and the protections will be available to all Members on the same terms. Moreover, the Exchange does not believe that the proposed change will result in any burden on Members seeking to cross the spread and execute at the far side quote (the NBO (NBB) for buy (sell) orders) or to Members seeking to conduct a market wide sweep with intermarket sweep orders. D-Limit orders will only be subject to potential adjustment for an extremely small percentage of the trading day and the rest of the time will be available for execution, if consistent with the order's limit price, at the far side quote. To the extent that a D-Limit order is adjusted to a less aggressive price while a Member is seeking to access the full displayed size of the order at the prior more aggressive price with an intermarket sweep order, the Member would be permitted to trade-through the D-Limit order at the more aggressive price pursuant to Rule 611(b)(6) of Regulation NMS.[85] Moreover, the proposed change would provide potential benefits to such Members to the extent there is more liquidity available on IEX as a result of the protections provided to users of D-Limit orders. As discussed above, the protections offered by the D-Limit order type, as proposed, are intended in part to incentivize additional resting limit orders to be entered on the Exchange, which would provide additional available liquidity to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve or disapprove such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–IEX–2019–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2019–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[83] *See* NYSE Amex Rule 7.31E(h)(3)(D).

[84] *See* Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768, 38853 (August 7, 2018).

[85] Regulation NMS Rule 611(b)(6) provides an exception to its trade-through requirements if the transaction that constituted the trade-through was effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through. *See* 17 CFR 242.611(b); *see also* Question 4.06 in ''Responses to Frequently Asked Questions Concerning Rule 611 and 610 of Regulation NMS'' (April 4, 2008), available at *https://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm.*

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2019–15, and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28024 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[86] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87817; File No. SR–BX–2019–042]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled "Off-Exchange RWA Transfers" at BX Options 6, Section 6

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled "Off-Exchange RWA Transfers" at BX Options 6, Section 6.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, "Off-Exchange RWA Transfers" at BX Options 6, Section 6. This proposal is substantially the same as Cboe Exchange, Inc. ("Cboe") Rule 6.8.[3]

Proposed Options 6, Section 6 is intended to facilitate the reduction of risk-weighted assets ("RWA") attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) ("Net Capital Rules") requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Participants[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Participants are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Participants that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Participants that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

[4] 17 CFR 240.15c3–1.

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[6] The term Clearing Participant is defined within Options 1, Section 1(a)(16). All Clearing Participants must also be clearing members of The Options Clearing Corporation ("OCC").

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. BX currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Participant or non-Participant (including an affiliate of a Participant) may be transferred on, from, or to the books of a Clearing Participant off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation [11] member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below);[12] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[13]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Options 6, Section 6(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Participant X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Participant Y, which is not affiliated with a U.S.-bank holding company. Clearing Participant X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Participant X clearing account and determines it must reduce its open positions to satisfy Clearing Participant X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Participant X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Participant Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Participant must give up a Clearing Participant for each transaction it effects on the Exchange, which identifies the Clearing Participant through which the transaction will clear.[14] A Participant may change the give up for a transaction within a specified period of time.[15] Additionally, a Participant may also change the Clearing Participant [16] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[17] In the above example, if Market Maker A had initially given up Clearing Participant Y rather than Clearing Participant X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Participant Y pursuant to Options 6, Section 1 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Participant restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different

[11] The term Clearing Corporation is defined within Options 1, Section 1(a)(15).

[12] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

[14] *See* Options 6B, Section 2.

[15] *See* Options 6, Section 1.

[16] The Clearing Member Trade Assignment (''CMTA'') process at The Options Clearing Corporation (''OCC'') facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[17] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

exchanges, but only if the Market Maker nominees are trading for the same Participant, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Participant X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Participant Y to its account with Clearing Participant X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Participant Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[18] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[19]

Finally, the Exchange notes it is reserving Sections 5 and 7 of Options 6 for consistency in rule numbering with Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's proposal is substantially the same as Cboe Rule 6.8

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow

[18] *See* proposed paragraph (a)(4).

[19] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Participants and Clearing Participants under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Participants and non-Participants with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Participants and non-Participants with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2019–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–042 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28025 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87848; File No. SR-CboeEDGX–2019–075]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .01 of Rule 2.4 To Allow the Exchange To Provide Annual Notification to Individual Members That Are Subject to Paragraph (b) of Rule 2.4

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume on the Exchange.

The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume on the Exchange.

As background, Regulation Systems Compliance and Integrity (''Regulation SCI'')[5] applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''). Specifically, Rule 1004 of Regulation SCI states that each SCI entity shall establish standards for the designation of Members that are necessary for the maintenance of fair and orderly markets in the event of the activation of the business continuity and disaster recovery plans, designate such Members in scheduled functional and performance testing of the operation of such plans no less than once every 12 months, and coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

In order to comply with the coordination requirement among SCI entities, the Exchange has conducted the required operational testing in parallel with the industry-led testing program coordinated by the Securities Industry and Financial Markets Association (''SIFMA''), which occurs on an annual basis. Currently, Interpretation and Policy .01 to Rule 2.4 requires the Exchange to identify and provide notice to designated Members under paragraph (b) on a quarterly basis based on trade activity during the previous quarter on the Exchange. Any Member that receives such notice is required to participate in the next annual functional and performance testing, which generally occurs in October. As such, a Member that receives notice in the third and/or fourth quarter of the preceding year or the first and/or second quarters of the current year will be required to participate in the annual functional and performance testing. As a result, Members would be notified in October, January, April, and/or July of their requirement to connect to the Exchange's backup systems and participate in functional and performance testing scheduled for October, which means that certain Members receive notification of their designation and requirement to connect and participate in functional and performance testing only three months prior to the scheduled operational and functional testing. Further, a Member that had been designated in any of the four preceding quarters would be required to participate in the functional and performance testing even if that Member did not meet the designation requirements of subparagraphs (b)(1) in the most recent quarter (*i.e.,* the second quarter).

As proposed, the amendment would allow the Exchange to identify designated Members based on trade activity during a single quarter for a given year, and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October. As such, the proposal would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the volume requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly

[5] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

notifications of Member designations.[6] As the proposed amendment provides the Exchange with greater flexibility in selecting the relevant quarter's trade data for which the designated Members will be identified, the designated Members may be identified based on more recent trading activity, rather than trade activity that potentially occurred more than one year prior to such testing and thus would more accurately represent the Members who met the requirements set forth in paragraph (b)(1) of Rule 2.4.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposal is consistent with the Act because, as noted above, the proposal would allow the Exchange to identify designated Members based on activity during a single quarter for a given year and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October, which the Exchange believes would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations. The proposed amendment will harmonize Exchange rules with those of other self-regulatory organizations in furtherance of the coordination of testing among SCI entities required by Rule 1004(c) of Regulation SCI. As set forth in Regulation SCI, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.''[7] The Exchange believes that the proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive proposal as it is intended to coordinate notification of Member participation requirements in the Exchange's testing of business continuity and disaster recovery plans with the annual industry-wide testing program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would eliminate potential confusion across self-regulatory organizations and simplify and clarify the process of notification to designated Members pursuant to paragraph (b) of Rule 2.4. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

[6] *See* Cboe Exchange, Inc. (''Cboe'') Rule 5.24, which states ''[Cboe] provides [] Trading Permit Holders with reasonable advance notice that they must participate in the testing described in paragraph (b) of this Rule 5.24.'' *See also* New York Stock Exchange (''NYSE'') Rule 49(b)(4), which states ''[a]t least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will . . . notify those member organizations that are required to participate based on such criteria.''

[7] *See* supra note 6.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–075. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–075 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary

[FR Doc. 2019–28176 Filed 12–27–19; 8:45 a.m.]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87831; File No. SR–NASDAQ–2019–100]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Through June 30, 2020 or the Date of Permanent Approval, if Earlier, the Penny Pilot Program

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 3 (Minimum Increments) to extend through June 30, 2020 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Options 3, Section 3 to extend the Penny Pilot through June 30, 2020 or the date of permanent approval, if earlier.[3]

Under the Penny Pilot, the minimum price variation for all participating options classes, except for options overlying the PowerShares QQQ Trust (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. Options overlying QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2019.[4] The Exchange now proposes to extend the time period of the Penny Pilot through June 30, 2020 or the date of permanent approval, if earlier.

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[4] *See* Securities Exchange Act Release No. 86153 (June 19, 2019), 84 FR 29903 (June 25, 2019) (SR–NASDAQ–2019–051).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2020 or the date of permanent approval, if earlier, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder. Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

A proposed rule changed filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program.[13] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–100 on the subject line.

Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–100. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–100 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28079 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or just shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44)

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87834; File No. SR–FICC–2019–006]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Include a New Foreign Legal Opinion Fee Applicable to Non-U.S. Membership Applicants, and Delete a Requirement for Direct Non-U.S. Members Relating to Annual Opinion Updates

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 16, 2019, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rules 19b–4(f)(2) and (f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of a proposal to amend the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules'') and the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'') [5] to: (i) Include a new foreign legal opinion fee in the GSD Fee Structure, and the MBSD Schedule of Charges Broker Account Group and MBSD Schedule of Charges Dealer Account Group (with the GSD Fee Structure, collectively referred to as the ''FICC Fee Schedules'') applicable to non-U.S. Netting Member and non-U.S. Clearing Member membership applicants,[6] and (ii) delete the requirement for direct non-U.S. members to submit, on an annual basis, an updated opinion on home country law (and if applicable, other non-domestic law), or a letter from their outside counsel indicating that there have been no material changes in home country law (or other applicable non-domestic law) since the date of issuance of the most recent opinion submitted to FICC (hereinafter referred to as the ''bring-down opinion'').[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the GSD Rules and the MBSD Rules to: (i) Include a new foreign legal opinion fee in the FICC Fee Schedules applicable to non-U.S. membership applicants,[8] and (ii) delete the requirement for direct non-U.S. members to submit a bring-down opinion on an annual basis.

Background

Under FICC's current process applicable to both GSD and MBSD, a non-U.S. foreign applicant, including an applicant that is a U.S. branch or agency of a non-U.S. bank, provides an extensive legal opinion addressing complex issues such as netting, bankruptcy, and choice of law issues under the law of the applicant's home jurisdiction (the ''foreign insolvency and netting opinion'').[9] The foreign insolvency and netting opinion is provided by outside counsel hired by the applicant. The opinion is then reviewed (and negotiated with the applicant's counsel, as needed) by FICC and FICC's outside U.S. counsel. As such, in this current process, both the applicant and FICC are incurring duplicative legal costs.

In addition, GSD and MBSD currently require direct non-U.S. members (*i.e.,* those not participating through a U.S. branch or agency) to provide bring-down opinions annually. Again, FICC hires its own outside U.S. counsel to review the bring-down opinions.

Proposed Process

In order to address the legal costs for the review of the non-U.S. legal opinions for non-U.S. membership applicants, FICC proposes to modify the current process for obtaining non-U.S. legal opinions and implement a new foreign legal opinion fee (''Foreign Legal Opinion Fee''). Such fee would be non-refundable regardless of the outcome of the application process.

Proposed Rule Changes

Pursuant to the proposed rule changes, FICC would select outside counsel to provide a foreign insolvency and netting opinion satisfactory to FICC regarding the laws of the applicable non-U.S. jurisdiction. This would alleviate the burden from membership applicants of having to hire their own outside counsel to prepare the opinion. Also pursuant to this proposal, the FICC Fee Schedules would be amended to provide that the initial non-U.S. membership applicant (including one participating through a U.S. branch or agency) from a given jurisdiction would be advised of a ''Maximum Estimated Charge'' based on the estimated amount provided to FICC by FICC's outside counsel with respect to obtaining the foreign insolvency and netting opinion for that jurisdiction. The estimate would be prepared on an as-needed basis and would not be based on a pre-existing schedule. FICC would advise the non-U.S. applicant of the Maximum Estimated Charge in writing.

The amount of the Foreign Legal Opinion Fee charged to the applicant would be the lesser of a Maximum Estimated Charge and the actual costs charged to FICC by outside counsel providing a legal opinion in form and substance satisfactory to FICC regarding the laws of the non-U.S. jurisdiction. If within five (5) business days after FICC advises the non-U.S. membership applicant of the Maximum Estimated Charge, as described above, the non-U.S. applicant notifies FICC in writing that it will terminate its application, the non-U.S. applicant will not be charged the Foreign Legal Opinion Fee. If the application is terminated, the Maximum Estimated Charge would no longer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2) and (f)(4).

[5] Capitalized terms not defined herein are defined in the GSD Rules and MBSD Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] The proposed fee would also be applicable to applicants that are U.S. branches and agencies of non-U.S. banks because such applicants are also required to submit a foreign legal opinion as part of their application.

[7] The annual bring-down opinion requirement does not apply to non-U.S. members participating through U.S. branches or agencies.

[8] *Supra* note 6.

[9] Section 5 of GSD Rule 2A and Section 3 of MBSD Rule 2A reference opinions as one of the possible required documents in the application submission. *See* GSD Rule 2A and MBSD Rule 2A, *supra* note 5. The application requirements sheet provided to potential GSD and MBSD members outlines the types of opinions required.

apply and FICC would obtain a new Maximum Estimated Charge from FICC's outside counsel if it receives a subsequent application from that jurisdiction. If the initial non-U.S. membership applicant does not terminate its application within five (5) business days of FICC advising it of the Maximum Estimated Charge, then the non-U.S. applicant would be billed for the Foreign Legal Opinion Fee in the amount that would be determined as described above. Promptly after FICC's outside counsel has provided to FICC a final invoice stating the actual amount to be charged to FICC for the foreign legal opinion, FICC would send an invoice to the applicant. Payment by the non-U.S. membership applicant would be due within ten (10) business days of the non-U.S. applicant's receipt of an invoice, including payment instructions, from FICC.

The FICC Fee Schedules would not expressly include an absolute maximum amount for the Foreign Legal Opinion Fee because, based on FICC's experience in reviewing foreign legal opinions, the level of review required for FICC to gain comfort that the law of the applicant's jurisdiction does not provide material impediments to enforcement of the GSD Rules and MBSD Rules, as applicable, can vary significantly by jurisdiction, resulting in significant variance in counsel costs to FICC. The FICC Fee Schedules would not include an absolute minimum amount for the Foreign Legal Opinion Fee because FICC would not charge an applicant a Foreign Legal Opinion Fee that is in an amount that is higher than the actual amount billed by FICC's outside counsel to provide the applicable foreign insolvency and netting opinion.

Each subsequent non-U.S. membership applicant (''Subsequent Non-U.S. Applicant'') from the same jurisdiction would be charged a Foreign Legal Opinion Fee in an amount equal to the Foreign Legal Opinion Fee charged to the first non-U.S. membership applicant from the same jurisdiction that was charged a Foreign Legal Opinion Fee. FICC would notify each Subsequent Non-U.S. Applicant in writing of the amount of the Foreign Legal Opinion Fee that was determined as described above. If within five (5) business days after FICC advises the Subsequent Non-U.S. Participant Applicant of the applicable Foreign Legal Opinion Fee, the applicant notifies FICC in writing that it will terminate its membership application, the applicant would not be charged a Foreign Legal Opinion Fee. If the Subsequent Non-U.S. Applicant does not terminate its application within five (5) business days of FICC advising it of the amount of the Foreign Legal Opinion Fee, then the applicant would be billed accordingly. Payment by the Non-U.S. Participant Applicant of the full amount of the Foreign Legal Opinion Fee would be due within ten (10) business days of the applicant's receipt of an invoice, including payment instructions, from FICC.

Pursuant to the proposed rule change, FICC would delete from GSD Rule 3, Section 2 and MBSD Rule 3, Section 2 the requirement for direct foreign members to submit the annual bring-down opinions. FICC will instead periodically monitor to identify any significant changes in relevant non-U.S. jurisdictions that may be of interest to FICC. FICC would not charge members for this monitoring service.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the GSD Rules and MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[10] FICC believes the proposed Foreign Legal Opinion Fee would be equitably allocated because in accordance with the amendment to the FICC Fee Schedules as described above, a Foreign Legal Opinion Fee in the same amount would be charged to all subsequent applicants domiciled in the jurisdiction for which an applicable foreign legal opinion was obtained. In addition, FICC believes that the proposed Foreign Legal Opinion Fee would be reasonable because (i) it would be capped in the amount of the Maximum Estimated Charge, as described above, (ii) the amount of a Foreign Legal Opinion Fee charged to an applicant would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion, as described above, and (iii) it would eliminate the cost to FICC associated with the review of foreign legal opinions. Therefore, FICC believes that the proposed rule change would provide for the equitable allocation of reasonable fees among its participants, and is consistent with Section 17A(b)(3)(D).[11]

Section 17A(b)(3)(F) of the Act, requires, *inter alia,* that the GSD Rules and MBSD Rules are not designed to permit unfair discrimination in the admission of participants in the use of the clearing agency.[12] FICC believes the proposed rule changes are consistent with this provision because the proposal for FICC to obtain a single foreign netting and insolvency opinion from FICC outside counsel for all new non-U.S. membership applicants domiciled within a jurisdiction, rather than requiring each applicant to obtain an opinion from its own outside counsel in its jurisdiction, would provide for enhanced consistency in the review performed by FICC by eliminating the need for it to review multiple legal opinions submitted by each applicant individually. Similarly, FICC believes that removing the annual bring-down opinion requirement would provide for enhanced consistency in FICC's review of material changes in applicable non-U.S. law and would eliminate the situation whereby multiple direct foreign members from the same jurisdiction are each submitting separate bring-down opinions/letters. Therefore, FICC believes that the proposed rule change would not permit unfair discrimination in the admission of members in the use of FICC, and is consistent with the provisions of Section 17A(b)(3)(F).[13]

Rule 17Ad–22(e)(18) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.[14] FICC believes that the proposed rule changes regarding the Foreign Legal Opinion Fee and elimination of the annual bring-down requirement have been designed to meet the applicable provisions of Rule 17Ad–22(e)(18). This is because the netting and insolvency opinion requirement for non-U.S. applicants, which is a risk-based requirement in that it allows FICC to learn and address any potential legal risk arising from a non-U.S. jurisdiction's laws, would remain under the proposed rule changes. The proposed rule change would not adversely affect fair and open access because the requirement for such legal opinion exists today in that non-U.S. applicants must procure and pay for their own opinion currently. Moreover, the Foreign Legal Opinion Fee would constitute a publicly disclosed requirement for applying as a non-U.S.

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] *Id.*

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] *Id.*

[14] 17 CFR 240.17Ad–22(e)(18).

applicant to GSD and MBSD. Finally, while the proposal would eliminate the bring-down opinion requirement, FICC would continue to periodically monitor in order to identify any significant changes in relevant non-U.S. jurisdictions that may be of interest to FICC.

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed changes to the FICC Fee Schedules to impose the Foreign Legal Opinion Fee could impose a burden on competition because it would implement a new fee payable by a non-U.S. applicant in connection with a membership application to FICC, which currently does not exist in the FICC Fee Schedules. FICC does not believe that any burden on competition imposed by the changes to the FICC Fee Schedules would be significant because the Foreign Legal Opinion Fee is unlikely to cause a material impact to a non-U.S. membership applicant's overall cost of applying for FICC membership due to the fact that, absent the proposal, these applicants would have incurred the cost of obtaining the foreign legal opinion themselves. FICC believes that any burden on competition that is created by the proposed changes to the FICC Fee Schedules would be necessary in furtherance of the purposes of the Act [15] in order to cover costs to FICC associated with obtaining the foreign legal opinion that is necessary for FICC to determine whether it would face legal risks in connection with admitting a foreign membership applicant. FICC also believes that any burden that is created by the Foreign Legal Opinion Fee would be appropriate in furtherance of the Act [16] because it would be capped at the Maximum Estimated Charge and would not be greater than the costs FICC may incur in connection with obtaining the applicable foreign legal opinion.

FICC believes that the elimination of the annual bring-down requirement could promote competition because it would eliminate the cost of obtaining the bring-down opinion/letter currently incurred by direct foreign members, potentially lowering their operating costs.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FICC–2019–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2019–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2019–006 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28087 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] *Id.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87811; File No. SR–Phlx–2019–56]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 1000, 1014, 1034, 1068, 1080, 1087, 1090, and 1093

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1000, ''Applicability, Definitions and References,'' Rule 1014, ''Obligations of Market Makers,'' Rule 1034, ''Minimum Increments,'' Rule 1068, ''Directed Orders,'' Rule 1080, ''Electronic Acceptance of Quotes and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Orders,'' Rule 1087, ''Price Improvement XL (''PIXL''),'' Rule 1090, ''Mass Cancellation of Trading Interest,'' and Rule 1093 titled ''Away Markets and Order Routing.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1000, ''Applicability, Definitions and References,'' Rule 1014, ''Obligations of Market Makers,'' Rule 1034, ''Minimum Increments,'' Rule 1068, ''Directed Orders,'' Rule 1080, ''Electronic Acceptance of Quotes and Orders,'' Rule 1087, ''Price Improvement XL (''PIXL''),'' Rule 1090, ''Mass Cancellation of Trading Interest,'' and Rule 1093 titled ''Away Markets and Order Routing.'' Each rule change will be discussed below.

Applicability, Definitions and References

The Exchange proposes to define a ''bid'' and an ''offer'' within Phlx Rule 1000(b). The Exchange proposes to state the term ''bid'' means a quote or limit order to buy one or more options contracts within Rule 1000(b)(62). The Exchange proposes to state, the term ''offer'' means a quote or limit order to sell one or more options contracts within Rule 1000(b)(63). The Exchange believes that the addition of these definitions will bring greater transparency to the Exchange's Rules.

Minimum Increments

The Exchange proposes to amend Rule 1034 regarding minimum increments. The Exchange proposes to reorganize and update the rule. The Exchange proposes to create a Commentary section to Rule 1034 and relocate all exceptions to Rule 1034(a) in the Commentary. The Exchange would amend Rule 1034(a) to state, except as provided in the Commentary and then also amend the words ''quoting'' to ''trading'' and eliminate the word ''decimals.'' The Exchange notes that executions are considered when determining the minimum price variations of options which have prices at $3.00 or higher or are priced under $3.00. The word ''quoting'' is not as precise as word ''trading.'' The Exchange utilizes executions to enforce minimum increments submitted by the member. While the word ''quoting'' is not incorrect, the Exchange believes ''trading'' is more understandable and is similarly utilized by Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX'') at Options 3, Section 3 of those Rulebooks. Similarly, the Exchange is removing the word ''decimals'' and similar to ISE, GEMX and MRX at Options 3, Section 3, stating ''at a price'' because the Exchange believes this language makes clear the intent. These changes do not result in a System change, rather they represent the Exchange's current System operation.

The Exchange proposes to renumber current Rule 1034(a)(i)(A) as Rule 1034(a)(1), without change. The Exchange proposes to renumber current Rule 1034(a)(i)(C) as Rule 1034(a)(2) and change the words ''Phlx XL II system'' to simply the defined term ''System.'' The Exchange proposes to renumber current Rule 1034(a)(v) as Rule 1034(a)(3) and remove the text ''However'' and instead add language to exclude paragraph (a) similar to ISE, GEMX and MRX Rules at Options 3, Section 3. The Exchange proposes to relocate current Rule 1034(a)(i)(b) as Commentary .01 and add the title ''Penny Pilot Program'' before the rule text. The Exchange proposes to relocate current Rules 1034(a)(ii), (iii), and (iv) as Commentary .02, .03 and .04, respectively.

The Exchange believes that these rule changes will bring greater clarity to the Rule.

Directed Orders

The Exchange proposes to remove rule text within Rule 1068(a)(i)(A) with respect to Directed Orders. The current rule text provides, ''The term ''Directed Order'' means any order (other than a stop or stop-limit order as defined in Options 8, Section 32) to buy or sell which has been directed to a particular Specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via the System.'' The Exchange proposes to remove the limitation for a stop or stop-limit order. The System will allow any order to be considered a Directed Order. Today, Nasdaq ISE, LLC permits all order types to be Preferenced.[3]

Price Improvement XL (''PIXL'')

The Exchange proposes to amend Rule 1087 to make clear at the beginning of the Rule which provisions apply to Public Customer-to-Public Customer Cross Orders. Today, Phlx Rule 1087(a)[4] and (f)[5] permit Public Customer-to-Public Customer Cross Orders to be entered into PIXL. Today Public Customer-to-Public Customer Cross Orders may only be entered into PIXL. This new sentence makes clear which provisions govern Public Customer-to-Public Customer Cross Orders. The Exchange proposes to capitalize the term ''Public Customer-to-Public Customer Cross Orders'' within Rules 1014(e) and Rule 1080(e) to conform to the proposed defined term.

Mass Cancellation of Trading Interest

The Exchange proposes to adopt a new Rule 1090 titled ''Mass Cancellation of Trading Interest.'' The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') Rules at Chapter VII, Section 11 permit Participants on those markets to contact market operations and manually request

[3] *See* Nasdaq ISE, LLC Rules at Options 2, Section 10.

[4] Phlx Rule 1087(a) provides, ''Auction Eligibility Requirements. All options traded on the Exchange are eligible for PIXL. A member (the ''Initiating Member'') may initiate an Auction provided all of the following are met:'' . . . Pursuant to Rule 1087(f), the Exchange will allow a Public Customer-to-Public Customer PIXL Order to trade on either the bid or offer, if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting Public Customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The Exchange will continue to reject a PIXL Order to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer).''

[5] Phlx Rule 1087(f) provides, ''In lieu of the procedures in paragraphs (a)–(b) above, an Initiating Member may enter a PIXL Order for the account of a Public Customer paired with an order for the account of a Public Customer and such paired orders will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same series or same strategy, in which case the orders will be rejected. The execution price for such a PIXL Order (except if it is a Complex Order) must be expressed in the quoting increment applicable to the affected series. Such an execution may not trade through the better of the NBBO or Reference BBO or at the same price as any resting Public Customer order. The execution price for such a Complex Order PIXL may be in .01 increments and may not trade at a price equal to or through the cPBBO or at the same price as a resting Public Customer Complex Order.''

cancellation of interest. The Exchange proposes to adopt a rule which also permits members to contact market operations and request the Exchange to manually cancel interest. The proposed new rule would state, ''A member may cancel any bids, offers, and orders in any series of options by requesting Phlx Market Operations [6] staff to effect such cancellation as per the instructions of the Member.'' This new rule reflects the Exchange's current practice of allowing members to contact Phlx Market Operations and request the Exchange to cancel any bid, offer or order in any series of options. The Exchange would cancel such bid, offer or order pursuant to the member's instruction. The Exchange desires to memorialize the availability of this service.

Routing

The Exchange filed a proposal to amend Rule 1093 [7] as ''Away Markets and Order Routing'' in April 2019.[8] At this time the Exchange proposes further amendment to this rule to mirror changes that were proposed to NOM's Rule at Chapter VI, Section 11.[9] The changes proposed herein are not changes to the System, rather the Exchange proposes to add other scenarios that may be possible during Routing and make the current rule text more clear to provide market participants with clear expectations regarding orders that are marked ''DNR'' and orders that route.

Currently, Rule 1093(a) states, ''When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market.'' The Exchange proposes to remove this sentence because the price at which the order would route in explained in greater detail within Rule 1093(a)(iii). Also, this sentence is confusing because the price at which an order would execute is dependent on the scenario within which an order would route. Removing this sentence will remove any confusion related to the price at which the order would route.

The Exchange proposes to amend rule text within Rule 1093(a)(iii)(A) related to DNR Orders. Today, current rule text provides, ''Any incoming order interacting with such a resting DNR order will execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price.'' The Exchange proposes to amend this language to: (1) Clarify the current scenario to more accurately capture the order of events; and (2) add another scenario that is not contemplated by the current rule text.

The Exchange proposes to clarify the current rule text to provide, ''Any incoming order interacting with such a resting DNR Order will execute at the ABBO price, unless (1) the ABBO is improved to a price which crosses the DNR Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price . . .''. This proposed new text intends to make clear that if the Exchange's System is executing an incoming order against a resting DNR Order which is displayed, it would not consider an updated ABBO which crossed the displayed DNR Order. The System would not take into account the away market order or quote which crossed the DNR Order's displayed price. The Exchange is not trading-through an away market in this scenario, rather an away market is crossing Phlx's displayed market and therefore that market has the obligation not to trade-through Phlx's displayed price. A similar change is being made to the last sentence of Rule 1093(a)(iii)(B)(5) for FIND Orders and the last sentence Rule 1093(a)(iii)(C)(6) for SRCH Orders. By way of example, consider the following sequence of events in the System:

9:45:00:00:00—MIAX Quote 0.95 × 1.20
9:45:00:00:10—OPRA updates MIAX BBO 0.95 × 1.20
9:45:00:00:20—Phlx Local BBO Quote 1.00 × 1.15
9:45:00:00:30—OPRA disseminates PHLX BBO updates: 1.10 × 1.15
9:45:00:00:35: CBOE Quote 1.00 × 1.12
9:45:00:00:45—OPRA disseminates CBOE BBO 1.00 × 1.12
9:45:00:00:50—DNR Order: Buy 5 @ 1.15 (exposes @ ABBO of 1.12, displays 1 MPV from ABBO @ 1.11)
9:45:00:00:51—OPRA disseminates PHLX BBO updates: 1.11 × 1.15 (1.11 being the DNR Order displaying 1 MPV from ABBO)
9:45:00:00:60—MIAX Quote updates to 1.00 × 1.10 (1.10 crosses the displayed DNR Order price, violating locked/crossed market rules; henceforth, we need not protect this price)
9:45:00:00:65—OPRA disseminates MIAX BBO 1.00 × 1.10
9:45:00:00:75—Phlx Market Maker Order to Sell 5 @ 1.09
9:45:00:00:76—Market Maker Order immediately executes against DNR Order 5 contracts @ 1.12 (1.12 being the 'previous' ABBO price disseminated by CBOE before the receipt of the DNR Order that was subsequently and illegally crossed by MIAX's 2nd quote)
9:45:00:00:77—OPRA disseminates PHLX BBO updates: 1.10 × 1.15 (reverts back to BBO set by Phlx Local Quote since the DNR Order has executed)

The Exchange also proposes to add a new scenario to the above-referenced sentence to state, ''or (2) the ABBO is improved to a price which locks the DNR Order's displayed price, in which case the incoming order will execute at the DNR Order's displayed price.'' The Exchange is adding the scenario where the ABBO is improved to a price which locks the DNR Order's displayed price. In this added scenario, the incoming order will execute at the DNR Order's displayed price. The Exchange notes that this scenario is not contained in the current rule text. Adding this scenario is consistent with the Act because it will bring greater transparency to the routing rule and inform members about this potential outcome if a member elects to mark their order as ''DNR.''

The Exchange also proposes to amend the next sentence within Rule 1093(a)(iii)(A) which currently provides, ''Should the best away market change its price to an inferior price level, the DNR Order will automatically re-price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price, and expose such orders at the ABBO to participants only if the re-priced order locks or crosses the ABBO. Once priced at its original limit price, it will remain at that price until executed or cancelled.'' The Exchange proposes to amend this rule text to provide, ''Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO or its original limit price, and expose such orders at the new ABBO only if the re-priced order locks or crosses the new ABBO.'' The Exchange is amending the current rule text to replace the phrase ''change its price'' with ''move'' and use the defined term ''MPV.'' The Exchange is further amending this sentence to expand on the re-pricing. In this scenario, the

[6] The request to Market Operations is a manual request which is made telephonically.

[7] The Exchange notes that the amendments to Rule 1093 reflect the current operation of the System. The purpose of the amendment is to align the rule to the specific operation of the routing functionality on Phlx.

[8] *See* Securities Exchange Act Release No. 85655 (April 16, 2019), 77 FR 16709 (April 22, 2019) (SR–Phlx–2019–06).

[9] *See* Securities Exchange Act Release No. 87030 (September 19, 2019), 84 FR 50495 (September 25, 2019) (SR–NASDAQ–2019–077).

Exchange has already re-priced the DNR Order and is re-pricing the DNR Order again because the best away market moved to an inferior price level. In this situation, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO price or its original limit price. The DNR Order will also expose such orders at the new ABBO, only if the re-priced order locks or crosses the new ABBO. Once booked at its original limit price, it will remain at that price until executed or cancelled. The Exchange believes that this language provides more context to the manner in which a DNR Order will be handled by the Exchange's System. The Exchange believes that this additional rule text is consistent with the Act as the DNR Order is exposed at the re-priced price if the Order locked or crossed the ABBO. Additionally, orders marked ''DNR'' would book at their original limit price and remain on the Order Book. Providing this additional transparency will assist members in determining if they want their orders routed.

As noted above, these changes to the DNR Orders represent current System functionality. The Exchange also proposes to capitalize the term ''Order'' within Rule 1093(a)(iii)(A).

With respect to FIND Orders within Rule 1093(a)(iii)(B) as well as SRCH Orders within Rule 1093(a)(iii)(C) the Exchange proposes to add a scenario that is not currently contemplated within the Rule. Specifically, the Exchange proposes to add a scenario that provides, if during the Route Timer, the ABBO markets move such that the FIND Order or SRCH Order is no longer marketable against the ABBO it provides the various scenarios that may occur. The FIND Order or SRCH Order may: (i) Trade at the next PBBO price (or prices) if the FIND Order SRCH Order price is locking or crossing that price (or prices), and/or (ii) be entered into the Order Book at its limit price if not locking or crossing the PBBO. A FIND Order or SRCH Order will be included in the displayed PBBO at its limit price, unless the FIND Order or SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. Further, the Exchange proposes a scenario where there exists a locked ABBO when the FIND Order or SRCH Order is entered onto the Order Book, the FIND Order or SRCH Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If during the Route Timer any new interest arrives opposite the FIND Order or SRCH Order that is marketable against the FIND Order or SRCH Order such interest will trade against the FIND Order or SRCH Order at the ABBO price unless the ABBO is improved to a price which crosses the FIND Order's or SRCH Order's displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. The above example for a DNR Order is applicable to the FIND Order and SRCH Order as well.

The Exchange offers the following example when there exists a locked ABBO at the time the FIND Order or SRCH Order is entered into the Order Book to demonstrate the manner in which Phlx posts and displays a FIND Order or SRCH Order. In this example, assume Away Market A has displayed its market at 1.00×1.20. Subsequent to Away Market A displaying it market, Away Market B displays its market at $.80 \times 1.00$. The option series is now locked at 1.00. Next, assume Phlx receives a FIND Order or SRCH Order at $2.00 to buy. In this example, Phlx would post the FIND Order or SRCH Order into the Phlx Order Book at $1.00 to buy and display the FIND Order at $0.95 to avoid locking the market in this option series.

The addition of this language to the FIND Order and SRCH Order rule text represents current System functionality. This scenario is not currently described within the current routing rule with respect to either a FIND Order or a SRCH Order that is not marketable after a Route Timer has commenced. The Exchange's rule seeks to provide members with the specific handling of a routable order in various scenarios during intra-day trading. The Exchange believes that the addition of this scenario is consistent with the Act. The FIND Order or SRCH Order, once it is not marketable against the ABBO, will trade at the next PBBO if the order is locked or crossed. The FIND Order or SRCH Order would book at its limit price, provided it is not locking or crossing the PBBO. The Exchange's rule must account for trade-through and will consider potential executions for the order consistent with routing instructions. The proposed rule text describes scenarios where it will be displayed at one MPV inferior to the ABBO or display at the locked ABBO price, as described in the above example. This rule text also is intended to demonstrate that if the ABBO is improved to a price which crosses the FIND Order's displayed price, the incoming order will execute at the previous ABBO price. The Exchange believes that this rule text will bring greater clarity to the Exchange's Rules.

Other Amendment

The Exchange also proposes to amend Rule 1096, Entry and Display of Orders, to correct the citation of Rule 1099 to Rule 1070.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange is adding more detail to its routing rule to provide market participants with greater transparency. The Exchange believes the added scenarios will provide more context to routing in general and for the specific routing strategies for the benefit of investors and the public interest. The Exchange continues to offer various choices to its market participants with respect to routing.

Applicability, Definitions and References

The Exchange's proposal to define a ''bid'' and an ''offer'' within Phlx Rule 1000(b) is consistent with the Act as these terms will bring greater transparency to the Exchange's Rules.

Minimum Increments

The Exchange's proposal to amend Rule 1034 to reorganize and update the rule is consistent with the Act because the change to the rule text as well as reorganized format should make clear the standards for minimum increments. The amendment to Rule 1034(a) to replace the word ''quoting'' to ''trading'' will make the rule text more precise as executions are considered for enforcement of minimum increments. Removing the word ''decimals'' and discussing price is also more precise rule text. The Exchange also notes that the proposed rule text conforms the wording to similar wording within Nasdaq ISE, LLC, Nasdaq GEMX, LLC and Nasdaq MRX, LLC Options 3, Section 3. These changes do not result in a System change, rather they represent the Exchange's current System operation. The remainder of the amendments to reorganize and renumber the Rule are non-substantive. The Exchange believes that these amendments will bring greater clarity to the Rule.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

Directed Orders

The Exchange's proposal to remove rule text within Rule 1068(a)(i)(A) will make clear that, today, both stop and stop-limit orders can be directed to a particular Specialist, RSQT, or SQT by an Order Flow Provider. The rule text limitation is not accurate because the System permits a stop and stop-limit order to be directed. Removing the limitation and allowing all order types to be directed allows members greater flexibility in choosing how to submit their orders. The Exchange notes that this amendment is consistent with the Act because the Exchange is not limiting the use of the stop order as a Directed Order. Today, Nasdaq ISE, LLC permits all order types to be Preferenced.[12]

Price Improvement XL (''PIXL'')

The Exchange's proposal to amend Rule 1087 to point out at the top of the Rule which provisions apply to Public Customer-to-Public Customer Cross Orders will make the Rule clear. Today, Phlx Rule 1087(a)[13] and (f)[14] permit Public Customer-to-Public Customer Cross Orders to be entered into PIXL. This amendment is consistent with the Act because market participants will be more aware of which provisions govern Public Customer-to-Public Customer Cross Orders.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 is consistent with the Act because permitting Members to contact Market Operations as a manual alternative to automated functionality which similarly allows Members to cancel interest provides Members experiencing their own system issues with a means to manage risk. Today, Members are able to cancel interest, in an automated fashion through protocols[15] and the Kill Switch.[16] This is a voluntary services offered to all members.

The Exchange notes that offering this service, which permits members to cancel interest, will not diminish a Registered Options Trader's obligation with respect to providing two-sided quotations and this rule is not inconsistent with other firm quote obligations of the Registered Options Trader. Upon the request of a member, Phlx Market Operations will manually input a mass cancellation message into the System consistent with the member's instruction to cancel trading interest. Once the mass cancellation message is entered into the System by Phlx Market Operations, the message will be accepted by the System in the order of receipt in the queue such that the interest that was already accepted into the System will be processed prior to the mass cancellation message. In addition, mass cancellation messages entered into the System by Phlx Market Operations are handled by the System through the same queuing mechanism that a quote or order message is handled by the System. The Exchange notes its processing of a mass cancellation message inputted by Phlx Market Operations and handled by the System is consistent with firm quote and order handling rules.

As noted above, NOM and BX Rules at Chapter VII, Section 11 allow NOM and BX Participants to also contact market operations and request cancellations of interest. This new rule reflects the Exchange's current practice.

Routing

The Exchange's proposal to remove the following sentence from Rule 1093(a), ''When checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market,'' is consistent with the Act because this sentence is vague. The price at which an order would execute is dependent on the scenario within which an order would route. Removing this sentence will remove any confusion related to the price at which the order would route. The proposed rule would also add additional detail about the scenarios under which an order would route away.

The Exchange's proposal to amend the sentence within Rule 1093(a)(iii)(A) related to DNR Orders which provides, ''Any incoming order interacting with such a resting DNR order will execute at the ABBO price, unless the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the previous ABBO price,'' is consistent with the Act. The Exchange proposes to amend this rule text to clarify the current rule text and add another scenario that is not currently within the rule text. The Exchange proposes to state, ''Any incoming order interacting with such a resting DNR order will execute at the ABBO price, unless (1) prior to execution, while the incoming order is matched with the resting DNR Order, the ABBO is improved to a price which crosses the DNR's displayed price, in which case the incoming order will execute at the ABBO price which was available upon arrival of the incoming order which matched with the DNR Order; or (2) the ABBO is improved to a price which locks the DNR's displayed price, in which case the incoming order will execute at the DNR's displayed price.'' The System would not take into account the away market order or quote which crossed the DNR's displayed price. The Exchange is not trading-through an away market in this scenario, rather an away market is crossing Phlx's displayed market and therefore that market has the obligation not to trade-through Phlx's displayed price.

The Exchange is also adding a scenario where the ABBO is improved to a price which locks the DNR's displayed price. In this added scenario, the incoming order will execute at the DNR's displayed price. The Exchange notes that this scenario is not contained in the current rule text. Adding this scenario is consistent with the Act because it will bring greater transparency to the routing rule and inform members about this potential outcome if a member elects to mark their order as DNR. Additionally, amending a sentence[17] within Rule

[12] *See* Nasdaq ISE, LLC Options 2, Section 10.

[13] Phlx Rule 1087(a) provides, ''Auction Eligibility Requirements. All options traded on the Exchange are eligible for PIXL. A member (the ''Initiating Member'') may initiate an Auction provided all of the following are met:''. . . Pursuant to Rule 1087(f), the Exchange will allow a Public Customer-to-Public Customer PIXL Order to trade on either the bid or offer, if the NBBO is $0.01 wide, provided (1) the execution price is equal to or within the NBBO, (2) there is no resting Public Customer at the execution price, and (3) $0.01 is the Minimum Price Variation (MPV) of the option. The Exchange will continue to reject a PIXL Order to buy (sell) if the NBBO is only $0.01 wide and the Agency order is stopped on the bid (offer) if there is a resting order on the bid (offer).''

[14] Phlx Rule 1087(f) provides, ''In lieu of the procedures in paragraphs (a)–(b) above, an Initiating Member may enter a PIXL Order for the account of a Public Customer paired with an order for the account of a Public Customer and such paired orders will be automatically executed without a PIXL Auction, provided there is not currently an Auction in progress in the same series or same strategy, in which case the orders will be rejected. The execution price for such a PIXL Order (except if it is a Complex Order) must be expressed in the quoting increment applicable to the affected series. Such an execution may not trade through the better of the NBBO or Reference BBO or at the same price as any resting Public Customer order. The execution price for such a Complex Order PIXL may be in .01 increments and may not trade at a price equal to or through the cPBBO or at the same price as a resting Public Customer Complex Order.''

[15] *See* Options 3 at Supplementary Material .03 to Section 7.

[16] *See* Rule 1073.

[17] The current sentence within Rule 1093(a)(iii)(A) states, ''Should the best away market change its price to an inferior price level, the DNR Order will automatically re-price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer

Continued

1093(a)(iii)(A) to provide, ''Should the best away market move to an inferior price level, the DNR Order will automatically re-price from its one MPV inferior to the original ABBO and display one MPV away from the new ABBO or its original limit price, and expose such orders at the new ABBO only if the re-priced order locks or crosses the new ABBO'' is consistent with the Act because the additional language expands on the current re-pricing that exists today. The Exchange believes that this language provides more context to the manner in which a DNR Order will be handled by the Exchange's System. The Exchange believes that this additional rule text is consistent with the Act as the DNR Order would re-price again from its one MPV inferior to the original ABBO because the best away market moved to an inferior price level. The DNR Order would display one MPV away from the new ABBO price or its original limit price. Also, the DNR Order would expose such orders at the new ABBO, only if the re-priced order locks or crosses the new ABBO. Once booked at its original limit price, it will remain on the Order Book at that price until executed or cancelled. Providing this additional transparency will assist members in determining if they want their orders routed.

With respect to FIND Orders within Rule 1093(a)(iii)(B) as well as SRCH Orders within Rule 1093(a)(iii)(C) the amendments are consistent with the Act as they propose a scenario that is not currently within the Rules. The Exchange proposes to add a scenario that provides, if during the Route Timer, the ABBO markets move such that the FIND Order or SRCH Order is no longer marketable against the ABBO it provides the various scenarios that may occur. Also, if there exists a locked ABBO when the FIND Order or SRCH Order is entered onto the Order Book and if during the Route Timer any new interest arrives opposite the FIND Order or SRCH Order that is marketable against the FIND Order or SRCH Order. Scenarios are provided for each of these situations within the new rule text. The new text seeks to clearly provide a member with the specific handling of a routable order for various scenarios during intra-day trading. The Exchange believes that the addition of these scenarios is consistent with the Act as the order, which was marked routable as either a FIND Order or SRCH Order, once it is not marketable against the ABBO, will either trade at the next PBBO, if the order locks or crosses the FIND Order or SRCH Order, or it would be booked at its limit price, providing it is not locking or crossing the PBBO. The Exchange's rule must account for trade-through and will consider potential executions for an order consistent with routing instructions. The Exchange believes that this rule text will bring greater clarity to the Exchange's Rules.

The amendments to Phlx Rule 1093 represent current System functionality. These rules are similar to current rule text on NOM at Chapter VI, Section 11.[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Applicability, Definitions and References

The Exchange's proposal to define a ''bid'' and an ''offer'' within Phlx Rule 1000(b) does not impose an undue burden on competition, rather these terms will bring greater transparency to the Exchange's Rules.

Minimum Increments

The Exchange's proposal to amend Rule 1034 to reorganize and update the rule does not impose an undue burden on competition because all market participants are subject to Rule 1034. The language will properly reflect that the standard for submitting orders with minimum increments into the System. The remainder of the amendments to reorganize and renumber the Rule are non-substantive.

Directed Orders

The Exchange's proposal to remove rule text within Rule 1068(a)(i)(A) does not impose an undue burden on competition as Stop Order and Stop-Limit Orders may be Directed Orders similar to all other order types. Removing the limitation and allowing all order types to be directed allows members greater flexibility in choosing how to submit their orders.

Price Improvement XL (''PIXL'')

The Exchange's proposal to amend Rule 1087 to point out at the top of the Rule which provisions apply to Public Customer-to-Public Customer Cross Orders does not impose an undue burden on competition. This rule change will make market participants more aware of which provisions govern Public Customer-to-Public Customer Cross Orders.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Rule 1090 does not impose an undue burden on competition because all members may utilize this service. This new rule reflects the Exchange's current practice.

Routing

The Exchange believes that adding greater detail to its rules concerning routing of orders does not impose an undue burden on competition, rather it provides greater transparency as to the potential outcomes when utilizing different routing strategies. Further, the Exchange notes that market participants may elect not to route their orders. The Exchange continues to offer various options to its market participants with respect to routing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[22] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

price or its original limit price, and expose such orders at the ABBO to participants only if the re-priced order locks or crosses the ABBO.''

[18] *See* Securities Exchange Act Release No. 87030 (September 19, 2019), 84 FR 50495 (September 25, 2019) (SR–NASDAQ–2019–077).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to immediately provide members with greater information and transparency on mass cancellation procedures and order routing strategies available on the Exchange. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–56 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28022 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87843; File No. SR–ISE–2019–32]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Mass Cancellation Rule and Amend Other Sections of the Rulebook

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2019, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Exchange also proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer'' within Options 1, Section 1, and update rule citations in various other rules.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Exchange also proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer within Options 1, Section 1, and update rule citations in various other rules.

Mass Cancellation of Trading Interest

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') rules at Chapter VII, Section 11 permit Participants on those markets to contact market operations and manually request cancellation of interest. The Exchange proposes to adopt a rule which also permits Members to contact market operations and request the Exchange to manually cancel interest. The proposed new rule would state, ''A Member may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

cancel any bids, offers, and orders in any series of options by requesting ISE Market Operations [3] staff to effect such cancellation as per the instructions of the Member.'' This new rule reflects the Exchange's current practice of allowing Members to contact ISE Market Operations and request the Exchange to cancel any bid, offer or order in any series of options. The Exchange would cancel such bid, offer or order pursuant to the Member's instruction. The Exchange desires to memorialize the availability of this service.

Definitions

The Exchange proposes to make a technical amendment to General 1, Section 1(a)(6) to note the acronym for an Electronic Access Member, an ''EAM'' within the definition. The acronym is utilized throughout the Rulebook. Defining the acronym within the definition will add transparency to the Rulebook.

The Exchange proposes to add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4). This term is utilized throughout the Rulebook. Defining this term will bring greater transparency to the Rulebook.

The Exchange proposes to amend the defined term ''offer'' to remove the phrase ''except that with respect to an Equity Security it means an order to sell such security.'' The term ''Equity Security'' is not defined within the ISE Rulebook and that particular phrase has no meaning relevant to the trading of options.

The Exchange proposes to alphabetize the defined term ''proprietary trading.'' The Exchange also proposes to update the numbering in the remainder of the rule and also update cross-references throughout the Rulebook [4] as a result of the renumbering.

Options 3, Section 16

The Exchange proposes to correct several incorrect references to Options 5 within Options 3, Section 16. The reference should have been to Options 3. Also, within Options 3, Section 16(b) the reference to Customer Cross Orders was originally to Supplementary Material .08 to this Rule 722. The citation was updated to reflect rules which were relocated with a rule change.[5] The Exchange believes that the citation should have been updated to reflect a separate citation for each rule mentioned and was incorrectly updated to only cite Customer Cross Orders. These rules were all relocated within Supplementary .08 to Rule 722 and then later relocated to separate rules. The Exchange proposes updating the rule to note the location of each rule mentioned. With the relocation of rules within the Rulebook, the reference was not updated.

Other Changes

The Exchange proposes to reserve certain rules [6] in connection with a Rulebook harmonization project which organizes the rules of the Nasdaq affiliated markets. The Exchange proposes to amend Options 7, Section 1 to change a reference from ''Schedule of Fees'' to ''Pricing Schedule'' to properly reference the rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 is consistent with the Act because permitting Members to contact Market Operations as a manual alternative to automated functionality, which similarly allows Members to cancel interest, provides Members experiencing their own system issues with a means to manage risk. Today, Members are able to cancel interest, in an automated fashion through protocols [9] and the Kill Switch.[10] This is a voluntary services offered to all Members.

The Exchange notes that offering this service, which permits Members to cancel interest, will not diminish a Market Maker's obligation with respect to providing two-sided quotations and this rule is not inconsistent with other firm quote obligations of the Market Maker. Upon the request of a Member, ISE Market Operations will manually input a mass cancellation message into the System consistent with the Member's instruction to cancel trading interest. Once the mass cancellation message is entered into the System by ISE Market Operations, the message will be accepted by the System in the order of receipt in the queue such that the interest that was already accepted into the System will be processed prior to the mass cancellation message. In addition, mass cancellation messages entered into the System by ISE Market Operations are handled by the System through the same queuing mechanism that a quote or order message is handled by the System. The Exchange notes its processing of a mass cancellation message inputted by ISE Market Operations and handled by the System is consistent with firm quote and order handling rules.

As noted above, NOM and BX Rules at Chapter VII, Section 11 allow NOM and BX Participants to also contact market operations and request cancellations of interest. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1, add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4), and amend the term ''offer'' within Options 1, Section 1(a)(26) are consistent with the Act because these amendments will add transparency to the Rulebook.

Other Changes

The Exchange's proposal to correct several incorrect references to Options 5, update the reference within Options 3, Section 16(b) to refer to Options 3, Section 12 not just 12(a), amend a term within Options 7, Section 1 and add cross-references to the Solicited Order Mechanism and Price Improvement Mechanism within Options 3, Section 16 are consistent with the Act and add greater clarity to the Rules. The remainder of the changes to correct numbering and citations are non-substantive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 does not impose an undue

[3] The request to Market Operations is a manual request which is made telephonically.

[4] *See* Options 3, Sections 10 and 20, Options 5 at Supplementary Material .01 and .02 and Options 7.

[5] *See* Securities Exchange Act Release No. 85308 (March 13, 2019), 84 FR 10136 (SR–ISE–2019–05).

[6] Options 2, Section 3, Options 3, Section 28 and Options 6E, Section 9 are being reserved.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Options 3 at Supplementary Material .03 to Section 7.

[10] *See* Options 3, Section 17.

burden on competition because all Members may utilize this service. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1, add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4), and amend the term ''offer'' within Options 1, Section 1(a)(26) do not impose an undue burden on competition because these amendments will add transparency to the Rulebook.

Other Changes

The Exchange's proposal to correct several incorrect references to Options 5, update the reference within Options 3, Section 16(b) to refer to Options 3, Section 12 not just 12(a), and add cross-references to the Solicited Order Mechanism and Price Improvement Mechanism within Options 3, Section 16 do not impose an undue burden on competition, rather these changes brings greater clarity to the Rules. The remainder of the changes to correct numbering and citations are non-substantive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that NOM and BX currently have rules that permit NOM and BX Participants to cancel interest,[15] and that the Exchange proposes the additional changes to provide greater clarity in its rules. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2019–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–32 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28171 Filed 12–27–19; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* NOM and BX Rules at Chapter VII, Section 11.

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87830; File No. SR–MIAX–2019–50]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend, reorganize and enhance its membership, registration and qualification rules and to make conforming changes to certain other rules.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Overview

The Exchange adopted registration requirements to ensure that associated persons[3] attain and maintain specified levels of competence and knowledge pertinent to their function. In general, the Exchange's current rules require that persons engaged in a Member's[4] securities business who are to function as representatives[5] or principals[6] register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations[7] and exempt specified associated persons from the registration requirements.[8] They also prescribe ongoing continuing education requirements for registered persons.[9] The Exchange proposes to amend, reorganize and enhance its rules regarding registration, qualification examinations and continuing education, as described below.

In 2017, the Commission approved a Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change consolidating and adopting prior National Association of Securities Dealers, Inc. (''NASD'') rules and rules incorporated from the New York Stock Exchange (''NYSE'') relating to qualification and registration requirements into the Consolidated FINRA Rulebook,[10] restructuring the FINRA representative-level qualification examinations, creating a general knowledge examination and specialized knowledge examinations, allowing permissive registration, establishing an examination waiver process for persons working for a financial services affiliate of a Member, and amending certain continuing education (''CE'') requirements (collectively, the ''FINRA Rule Changes'').[11]

The Exchange now proposes to amend, reorganize and enhance its own membership, registration and qualification requirements rules in response to the FINRA Rule Changes. In addition, the Exchange proposes to enhance its registration rules by adding a new registration requirement applicable to developers of algorithmic trading systems similar to a requirement adopted by FINRA pursuant to a 2016 FINRA rule change.[12]

As part of the Exchange's proposed rule change, current Exchange Rule 203, Qualification and Registration of Members and Associated Persons, Exchange Rule 1303, Termination of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member. *See* Exchange Rule 100. In accordance with other proposed changes in this filing, and as further described below, the Exchange proposes to amend the terms ''associated person'' or ''person associated with a Member.''

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] A ''representative'' is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. *See* proposed Exchange Rule 1901.

[6] A ''principal'' is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). A ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. *See* proposed Exchange Rule 1901.

[7] *See* proposed Exchange Rule 1901, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

[8] *See* proposed Exchange Rule 1902, Associated Persons Exempt from Registration.

[9] *See* proposed Exchange Rule 1903, Continuing Education Requirements.

[10] The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from the NYSE (the ''Incorporated NYSE rules''). While the NASD rules generally apply to all FINRA members, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE.

[11] *See* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements). *See also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

[12] *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities). In that rule change, FINRA addressed the increasing significance of algorithmic trading strategies by amending its rules to require registration, as Securities Traders, of associated persons primarily responsible for the design, development or significant modification of algorithmic trading strategies, or who are responsible for the day-to-day supervision or direction of such activities.

Registered Persons, and Exchange Rule 1304, Continuing Education for Registered Persons, are proposed to be deleted. These current Exchange rule provisions are incorporated into the new proposed 1900 Series of Exchange rules, as further described below.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions, Exchange Rule 601, Registered Option Traders, Exchange Rule 1000, Disciplinary Jurisdiction, Exchange Rule 1014, Imposition of Fines for Minor Rule Violations, Exchange Rule 1301, Registration of Options Principals, Exchange Rule 1302, Registration of Representatives, Exchange Rule 1306, Branch Offices, Exchange Rule 1307, Opening of Accounts, Exchange Rule 1309, Suitability of Recommendations, Exchange Rule 1310, Discretionary Accounts, and Exchange Rule 1319, Profit Sharing.

In place of the deleted rules, and parts of the amended rules, the Exchange proposes to adopt new Chapter XIX, Registration, Qualification and Continuing Education, in the Exchange's Rulebook, together with conforming changes to certain existing Exchange rules. In the new Chapter XIX series of rules, the Exchange would, among other things, recognize additional associated person registration categories, recognize a new general knowledge examination, permit the maintenance of permissive registrations, and require Securities Trader registration of developers of algorithmic trading strategies consistent with a comparable, existing FINRA registration requirement.[13]

The Exchange notes that the structure of this rule filing, as well as newly proposed Chapter XIX series of rules, is based on a recent rule filing by the Nasdaq Stock Market, LLC (''Nasdaq Stock Market'').[14] The similar Nasdaq Stock Market filing also amended, reorganized and enhanced membership, registration and qualification rules for the Nasdaq Stock Market, and was based on the FINRA Rule Changes.[15]

New Proposed Rules and Proposed Changes to Current Exchange Rules

A. Registration Requirements (Proposed Exchange Rule 1900)

Exchange Rule 203(a) currently requires individuals and associated persons engaged, or to be engaged, in the securities business of a Member to be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange.[16]

Proposed Exchange Rule 1900 provides that each person engaged in the securities business of a Member must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in proposed Exchange Rule 1901, unless exempt from registration pursuant to proposed Exchange Rule 1902.[17] Proposed Exchange Rule 1900 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

B. Minimum Number of Registered Principals (Proposed Exchange Rule 1900, Interpretation and Policy .01)

Exchange Rule 203, Interpretation and Policy .07, requires Members to register with the Exchange in a heightened capacity each individual acting in any of the following capacities: (a) Officer; (b) partner; (c) director; (d) supervisor of proprietary trading, market making or brokerage activities; and/or (e) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Each Member or Member organization must register with the Exchange at least two individuals acting in one or more of these capacities (the ''two-principal requirement''). The Exchange may waive this requirement if a Member demonstrates conclusively that only one individual acting in one or more of these capacities should be required to register. A Member or Member organization that conducts proprietary trading only and has 25 or fewer registered persons may be required to have one officer or partner who is registered in this capacity.[18]

The Exchange proposes to delete these requirements and in their place adopt new Exchange Rule 1900, Interpretation and Policy .01. The proposed rule would provide firms that limit the scope of their business with flexibility in satisfying the two-principal requirement. In particular, proposed Exchange Rule 1900, Interpretation and Policy .01, would require each Member, except a Member with only one associated person, to have at least two officers or partners who are registered as General Securities Principals, provided that a Member that is limited in the scope of its activities may instead have two officers or partners who are registered in a principal category that corresponds to the scope of the Member's activities.[19] For instance, if a firm's business is limited to securities trading, the firm may have two Securities Trader Principals, instead of two General Securities Principals. Additionally, proposed Exchange Rule 1900, Interpretation and Policy .01, would provide that any Member with only one associated person is excluded from the two principal requirement. Proposed Exchange Rule 1900, Interpretation and Policy .01, would provide that existing Members as well as new applicants may request a waiver of the two-principal requirement, consistent with current Exchange Rule 203, Interpretation and Policy .07. Finally, the Exchange proposes to retain the existing provision in Exchange Rule 203 permitting a proprietary trading firm with 25 or fewer registered representatives to have just one registered principal. The FINRA Rule Changes do not include this provision.[20]

[13] *See id.*

[14] *See* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules)

[15] *See id.*

[16] In general the 1900 Series would conform the Exchange's rules to FINRA's rules as revised in the FINRA Rule Changes, with modifications tailored to the business of the Exchange. However, the Exchange also proposes to adopt Exchange Rule 1900, Interpretation and Policy .12, based upon a current Nasdaq Stock Market rule. *See* Nasdaq Stock Market, General 4, Section 1, Rule 1.1210, Supplementary Material .12; *see also* Securities Exchange Act Release No. 84386 (October 9, 2018), 83 FR 51988 (October 15, 2018) (SR–NASDAQ–2018–078). These provisions govern the process for applying for registration and amending the registration application, as well as for notifying the Exchange of termination of the Member's association with a person registered with the Exchange. The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .12, in order to have uniform processes and requirements in this area across the Exchange.

[17] Because the Exchange's proposed registration rules focus solely on securities trading activity, the proposed rules differ from the FINRA Rule Changes by omitting references to investment banking in proposed Exchange Rules 1900, Interpretations and Policies .03 and .10 of Exchange Rule 1900, Exchange Rules 1901 and 1903, and also by omitting as unnecessary from proposed Exchange Rule 1901, a limitation on the qualification of a General Securities Sales Supervisor to supervise the origination and structuring of an underwriting.

[18] Currently, Exchange Rule 203, Interpretation and Policy .08, describes when a Member is considered to be conducting only proprietary trading of the Member. Because the Exchange now proposes to delete Exchange Rule 203 in its entirety, Interpretation and Policy .08 of that rule would be reworded and relocated to Exchange Rule 100, Definitions, as a defined term.

[19] The principal registration categories are described in greater detail below.

[20] The Exchange does not propose to adopt provisions comparable to FINRA Rule 1210.01, which requires that all FINRA members have a Principal Financial Officer and a Principal Operations Officer, because the Exchange believes that its proposed Exchange Rule 1901(b)(3), Financial and Operations Principal, is sufficient. As described herein, proposed Exchange Rule

Continued

C. Permissive Registrations (Proposed Exchange Rule 1900, Interpretation and Policy .02)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid the examination requirement. Current Exchange Rule 203(a) further prohibits a Member from making an application for the registration of any person where there is no intent to employ that person in the Member's securities business. A Member may, however, maintain or make application for the registration of an individual who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the Member, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the Member.

The Exchange proposes to replace these provisions with proposed Exchange Rule 1900, Interpretation and Policy .02. The Exchange also proposes to expand the scope of permissive registrations and to clarify a Member's obligations regarding individuals who are maintaining such registrations.

Specifically, proposed Exchange Rule 1900, Interpretation and Policy .02, would allow any associated person to apply for or maintain any registration permitted by the Member. For instance, an associated person of a Member working solely in a clerical or ministerial capacity, such as in an administrative capacity, would be able to obtain and maintain a General Securities Representative registration with the Member. As another example, an associated person of a Member who is registered, and functioning solely as a General Securities Representative, would be able to obtain and maintain a General Securities Principal registration with the Member. Further, proposed Exchange Rule 1900, Interpretation and Policy .02, would allow an individual engaged in the securities business of a foreign securities affiliate or subsidiary of a Member to obtain and maintain any registration permitted by the Member.

The Exchange proposes to permit the registration of such individuals for several reasons. First, a Member may foresee a need to move a former representative or principal who has not been registered for two or more years back into a position that would require such person to be registered. Currently, such persons are required to requalify (or obtain a waiver of the applicable qualification examinations) and reapply for registration. Second, the proposed rule change would allow Members to develop a depth of associated persons with registrations in the event of unanticipated personnel changes. Third, allowing registration in additional categories encourages greater regulatory understanding. Finally, the proposed rule change would eliminate an inconsistency in the current rules, which permit some associated persons of a Member to obtain permissive registrations, but not others who equally are engaged in the Member's business.

Individuals maintaining a permissive registration under the proposed rule change would be considered registered persons and subject to all Exchange rules, to the extent relevant to their activities. For instance, an individual working solely in an administrative capacity would be able to maintain a General Securities Representative registration and would be considered a registered person for purposes of rules relating to borrowing from or lending to customers, but the rule would have no practical application to his or her conduct because he or she would not have any customers.

Consistent with the Exchange's supervision rules, Members would be required to have adequate supervisory systems and procedures reasonably designed to ensure that individuals with permissive registrations do not act outside the scope of their assigned functions.[21] With respect to an individual who solely maintains a permissive registration, such as an individual working exclusively in an administrative capacity, the individual's direct supervisor is not required to be a registered person. Members would be required to assign a registered supervisor to this person who would be responsible for periodically contacting such individual's direct supervisor to verify that the individual is not acting outside the scope of his or her assigned functions. If such individual is permissively registered as a representative, the registered supervisor must be registered as a representative or principal. If the individual is permissively registered as a principal, the registered supervisor must be registered as a principal.[22]

D. Qualification Examinations and Waivers of Examinations (Proposed Exchange Rule 1900, Interpretation and Policy .03)

Current Exchange Rule 203(a) provides that before a registration can become effective, the individual Member or individual associated person shall submit the appropriate application for registration, pass the Securities Industry Essentials Examination (''SIE''), pass a qualification examination appropriate to the category of registration as prescribed by the Exchange and submit any required registration and examination fees. The Exchange proposes to replace this rule language with new Exchange Rule 1900, Interpretation and Policy .03, Qualification Examinations and Waivers of Examinations.

As part of the FINRA Rule Changes, FINRA adopted a restructured representative-level qualification examination program whereby representative-level registrants would be required to take a general knowledge examination (the SIE) and a specialized knowledge examination appropriate to the representative's job functions at the firm with which he or she is associating.[23] Therefore, proposed Exchange Rule 1900, Interpretation and Policy .03, provides that before the registration of a person as a representative can become effective under proposed Exchange Rule 1900, such person must pass the SIE and an appropriate representative-level qualification examination as specified in proposed Exchange Rule 1901(c). Proposed Exchange Rule 1900, Interpretation and Policy .03, also provides that before the registration of a person as a principal can become effective under proposed Exchange Rule 1900, such person must pass an

1901(b)(3), requires Member firms operating pursuant to certain provisions of the Commission's rules to designate at least one Financial and Operations Principal. Further, the Exchange does not propose to adopt FINRA Rule 1210.01, which requires that (1) a member engaged in investment banking activities have an Investment Banking Principal, (2) a member engaged in research activities have a Research Principal, or (3) a member engaged in options activities with the public have a Registered Options Principal. The Exchange does not propose to recognize the Investment Banking Principal or the Research Principal registration categories, and the Registered Options Principal registration requirement is set forth in proposed Exchange Rule 1901(b)(7), and its inclusion is therefore unnecessary in proposed Exchange Rule 1900.

[21] FINRA Rule 1210.02 specifically cites FINRA's supervisory system rule, FINRA Rule 3110, by number. Proposed Exchange Rule 1900, Interpretation and Policy .02, refers generally to the Exchange's supervision rules rather than identifying them by number.

[22] In either case, the registered supervisor of an individual who solely maintains a permissive registration would not be required to be registered in the same representative or principal registration category as the permissively-registered individual. *See* proposed Exchange Rule 1900, Interpretation and Policy .02.

[23] *See supra* note 11.

appropriate principal-level qualification examination as specified in proposed Rule 1901(b).

Further, proposed Exchange Rule 1900, Interpretation and Policy .03, provides that if the job functions of a registered representative change and he or she needs to become registered in another representative-level category, he or she would not need to pass the SIE again. Rather, the registered person would need to pass only the appropriate representative-level qualification examination.[24] Thus under the proposed rule change, individuals seeking registration in two or more representative-level categories would experience a net decrease in the total number of exam questions they would be required to answer because the SIE content would be tested only once.

The proposed rule change solely impacts the representative-level qualification requirements. The proposed rule change does not change the scope of the activities permitted under the existing representative categories. For instance, after the operative date of the proposed rule change, a previously unregistered individual registering as a Securities Trader for the first time would be required to pass the SIE and an appropriate specialized knowledge examination. However, such individual may engage only in those activities in which a current Securities Trader may engage under current Exchange Rules.

Individuals who are registered on the operative date of the proposed rule change would be eligible to maintain those registrations without being subject to any additional requirements. Individuals who had been registered within the past two years prior to the operative date of the proposed rule change would also be eligible to maintain those registrations without being subject to any additional requirements, provided that they reregister with the Exchange within two years from the date of their last registration.

Further, registered representatives would be considered to have passed the SIE in the CRD system, and thus if they wish to register in any other representative category after the operative date of the proposed rule change, could do so by taking only the appropriate specialized knowledge examination.[25] However, with respect to an individual who is not registered on the operative date of the proposed rule change but was registered within the past two years prior to the operative date of the proposed rule change, the individual's SIE status in the CRD system would be administratively terminated if such individual does not register within four years from the date of the individual's last registration.[26]

In addition, individuals who had been registered as representatives two or more years, but less than four years, prior to the operative date of the proposed rule change would also be considered to have passed the SIE and designated as such in the CRD system. Moreover, if such individuals re-register with a firm after the operative date of the proposed rule change and within four years of having been previously registered, they would only need to pass the specialized knowledge examination associated with that registration position. However, if they do not register within four years from the date of their last registration, their SIE status in the CRD system would be administratively terminated. Similar to the current process for registration, firms would continue to use the CRD system to request registrations for representatives. An individual would be able to schedule both the SIE and specialized knowledge examinations for the same day, provided the individual is able to reserve space at one of FINRA's designated testing centers.

Finally, under current Exchange Rule 203, Interpretation and Policy .05, the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange proposes to replace Exchange Rule 203, Interpretation and Policy .05, with proposed Exchange Rule 1900, Interpretation and Policy .03, with changes that track FINRA Rule 1210.03. The proposed rule provides that the Exchange will only consider examination waiver requests submitted by a firm for individuals associated with the firm who are seeking registration in a representative-level or principal-level registration category. Moreover, proposed Exchange Rule 1900, Interpretation and Policy .03, states that the Exchange will consider waivers of the SIE alone or the SIE and the representative-level and principal-level examination(s) for such individuals.

E. Requirements for Registered Persons Functioning as Principals for a Limited Period (Proposed Exchange Rule 1900, Interpretation and Policy .04)

The Exchange proposes to adopt new Exchange Rule 1900, Interpretation and Policy .04, which provides that subject to the requirements of proposed Exchange Rule 1901, Interpretation and Policy .03, a Member may designate any person currently registered, or who becomes registered, with the Member as a representative to function as a principal for a period of 120 calendar days prior to passing an appropriate principal qualification examination, provided that such person has at least 18 months of experience functioning as a registered representative within the five-year period immediately preceding the designation and has fulfilled all prerequisite registration, fee and examination requirements prior to designation as principal. These requirements apply to any principal category, including those categories that are not subject to a prerequisite representative-level registration requirement, such as the Financial and Operations Principal registration category.[27] Similarly, the proposed rule would permit a Member to designate any person currently registered, or who becomes registered, with the Member as

[24] FINRA stated that the SIE would assess basic product knowledge; the structure and function of the securities industry markets, regulatory agencies and their functions; and regulated and prohibited practices. Proposed Exchange Rule 1900, Interpretation and Policy .03, provides that all associated persons, such as associated persons whose functions are solely and exclusively clerical or ministerial, are eligible to take the SIE. Proposed Rule 1900, Interpretation and Policy .03, also provides that individuals who are not associated persons of firms, such as members of the general public, are eligible to take the SIE. FINRA stated its belief that expanding the pool of individuals who are eligible to take the SIE would enable prospective securities industry professionals to demonstrate to prospective employers a basic level of knowledge prior to submitting a job application. Further, this approach would allow for more flexibility and career mobility within the securities industry. While all associated persons of firms as well as individuals who are not associated persons would be eligible to take the SIE pursuant to proposed Exchange Rule 1900, Interpretation and Policy .03, passing the SIE alone would not qualify them for registration with the Exchange. Rather, to be eligible for registration with the Exchange, an individual would be required to pass an applicable representative or principal qualification examination and complete the other requirements of the registration process.

[25] Under the proposed rule change, only individuals who have passed an appropriate representative-level examination would be considered to have passed the SIE. Registered principals who do not hold an appropriate representative-level registration would not be considered to have passed the SIE. For example, an individual who is registered solely as a Financial and Operations Principal (Series 27) today would have to take the Series 7 to become registered as a General Securities Representative. Under the proposed rule change, in the future, this individual would have to pass the SIE and the specialized Series 7 examination to obtain registration as a General Securities Representative.

[26] As discussed below, the Exchange proposes a four-year expiration period for the SIE.

[27] In this regard, the Exchange notes that qualifying as a registered representative is currently a prerequisite to qualifying as a principal on the Exchange except with respect to the Financial and Operations Principal.

a principal to function in another principal category for a period of 120 calendar days prior to passing an appropriate qualification examination as specified under proposed Rule 1901.[28] This provision, which has no counterpart in the Exchange's current rules, is intended to provide flexibility to Members in meeting their principal requirements on a temporary basis.

F. Rules of Conduct for Taking Examinations and Confidentiality of Examinations (Proposed Exchange Rule 1900, Interpretation and Policy .05)

Before taking an examination, FINRA currently requires each candidate to agree to the SIE Rules of Conduct for taking a qualification examination. Among other things, the examination Rules of Conduct require each candidate to attest that he or she is in fact the person who is taking the examination. The Rules of Conduct also require that each candidate agree that the examination content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct for taking a qualification examination, the candidate may forfeit the results of the examination and may be subject to disciplinary action by FINRA. For instance, for cheating on a qualification examination, the FINRA Sanction Guidelines recommend barring the individual.[29]

Effective October 1, 2018, FINRA codified the requirements relating to the Rules of Conduct for examinations under FINRA Rule 1210.05. FINRA also adopted Rules of Conduct for taking the SIE for associated persons and non-associated persons who take the SIE.

The Exchange proposes to adopt its own proposed Exchange Rule 1900, Interpretation and Policy .05, which would provide that associated persons taking the SIE are subject to the SIE Rules of Conduct, and that associated persons taking any representative or principal examination are subject to the Rules of Conduct for representative and principal examinations. Under the proposed rule, a violation of the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations by an associated person would be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade, such as Exchange Rule 301.[30] Further, if the Exchange determines that an associated person has violated the SIE Rules of Conduct or the Rules of Conduct for representative and principal examinations, the associated person may forfeit the results of the examination and may be subject to disciplinary action by the Exchange.

Proposed Exchange Rule 1900, Interpretation and Policy .05, also states that the Exchange considers all of the qualification examinations' content to be highly confidential. The removal of examination content from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such qualification examination or any other use that would compromise the effectiveness of the examinations and the use in any manner and at any time of the questions or answers to the examinations shall be prohibited and shall be deemed to be a violation of Exchange rules requiring observance of high standards of commercial honor or just and equitable principles of trade. Finally, proposed Exchange Rule 1900, Interpretation and Policy .05, would prohibit an applicant from receiving assistance while taking the examination, and require the applicant to certify that no assistance was given to or received by him or her during the examination.[31]

G. Waiting Periods for Retaking a Failed Examination (Proposed Exchange Rule 1900, Interpretation and Policy .06)

The Exchange proposes to adopt new Exchange Rule 1900, Interpretation and Policy .06, which provides that any person who fails to pass a qualification examination prescribed by the Exchange may retake that examination again after a period of 30 calendar days from the date of the person's last attempt to pass that examination.[32] Proposed Exchange Rule 1900, Interpretation and Policy .06, further provides that if a person fails an examination three or more times in succession within a two-year period, the person is prohibited from retaking that examination until 180 calendar days has elapsed from the date of the person's last attempt to pass that examination. These waiting periods would apply to the SIE and the representative and principal examinations.[33]

H. Continuing Education (''CE'') Requirements (Proposed Exchange Rule 1900, Interpretation and Policy .07)

Pursuant to Exchange Rule 203, Interpretation and Policy .04, each individual required to register under Exchange Rule 203 is required to satisfy the continuing education requirements set forth in Exchange Rule 1304, Continuing Education for Registered Persons, or any other applicable continuing education requirements as prescribed by the Exchange. Under Exchange Rule 1304, the CE requirements applicable to registered persons consist of a Regulatory Element[34] and a Firm Element.[35] The Regulatory Element applies to registered persons and must be completed within prescribed time frames.[36] Pursuant to current Exchange Rule 1304, Interpretation and Policy .01, a ''registered person'' means any Member, representative or other person registered or required to be registered under the Exchange's rules.[37] The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered

[28] Proposed Exchange Rule 1900, Interpretation and Policy .04, omits the reference in FINRA Rule 1210.04 to Foreign Associates, which is a registration category not recognized by the Exchange, but otherwise tracks the language of FINRA Rule 1210.04.

[29] *See* FINRA Sanction Guidelines (March 2019), VII. Qualification and Membership, pg. 38, at *https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf*.

[30] Exchange Rule 301, Just and Equitable Principles of Trade, prohibits Members from engaging in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members have the same duties and obligations as Members under Exchange Rule 301.

[31] The Exchange does not propose to adopt portions of FINRA Rule 1210.05, which apply to non-associated persons, over whom the Exchange would in any event have no jurisdiction.

[32] Proposed Exchange Rule 1900, Interpretation and Policy .06, has no counterpart in existing Exchange rules.

[33] FINRA Rule 1210.06 requires individuals taking the SIE who are not associated persons to agree to be subject to the same waiting periods for retaking the SIE. The Exchange does not propose to include this language in proposed Exchange Rule 1900, Interpretation and Policy .06, as the Exchange will not apply the proposed 1900 Series of rules in any event to individuals who are not associated persons of Members.

[34] *See* Exchange Rule 1304(a)

[35] *See* Exchange Rule 1304(b).

[36] Pursuant to Rule 1304(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Unless otherwise determined by the Exchange, a registered person who has not completed the Regulatory Element program within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under Rule 1304(a) must cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Exchange's rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

[37] *See* Exchange Rule 1304, Interpretation and Policy .01.

by the Member. For purposes of the Firm Element, the term ''covered registered persons'' is defined as any registered person who has direct contact with customers in the conduct of the Member's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons.[38]

The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, which CE requirements the Exchange proposes to reorganize, renumber and adopt as proposed Exchange Rule 1903. The Exchange believes that all registered persons, regardless of their activities, should be subject to the Regulatory Element of the CE requirements so that they can keep their knowledge of the securities industry current. Therefore, the Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .07, to clarify that all registered persons, including those who solely maintain a permissive registration, are required to satisfy the Regulatory Element, as specified in proposed Exchange Rule 1903, as discussed below.[39] Individuals who have passed the SIE but not a representative or principal-level examination and do not hold a registered position would not be subject to any CE requirements. Consistent with current practice, proposed Exchange Rule 1900, Interpretation and Policy .07, would also provide that if a person registered with a Member has a CE deficiency with respect to that registration, such person shall not be permitted to be registered in another registration category with the Exchange under proposed Exchange Rule 1901 with that Member or to be registered in any registration category with the Exchange under proposed Exchange Rule 1901 with another Member, until the person has satisfied the deficiency.

I. Lapse of Registration and Expiration of SIE (Proposed Exchange Rule 1900, Interpretation and Policy .08)

Current Exchange Rule 203(h) states that any person whose registration has been revoked by the Exchange as a disciplinary sanction or whose most recent registration has been terminated for two or more years immediately preceding the date of receipt by the Exchange of a new application shall be required to pass a qualification examination appropriate to the category of registration as prescribed by the Exchange. Any person who last passed the SIE or who was last registered as a Representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a Representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration. The two year period is calculated from the termination date to the date the Exchange receives a new application for registration. The Exchange proposes to delete Exchange Rule 203(h), and replace it with proposed Exchange Rule 1900, Interpretation and Policy .08, Lapse of Registration and Expiration of SIE.

Proposed Exchange Rule 1900, Interpretation and Policy .08, contains language comparable to that of Exchange Rule 203(h) but also clarifies that, for purposes of the proposed rule, an application would not be considered to have been received by the Exchange if that application does not result in a registration. Proposed Exchange Rule 1900, Interpretation and Policy .08, also sets forth the expiration period of the SIE. Based on the content covered on the SIE, the Exchange proposes that a passing result on the SIE be valid for four years. Therefore, under the proposed rule change, an individual who passes the SIE and is an associated person of a firm at the time would have up to four years from the date he or she passes the SIE to pass a representative-level examination to register as a representative with that firm, or a subsequent firm, without having to retake the SIE. In addition, an individual who passes the SIE and is not an associated person at the time would have up to four years from the date he or she passes the SIE to become an associated person of a firm, pass a representative-level examination and register as a representative without having to retake the SIE.

Moreover, an individual holding a representative-level registration who leaves the industry after the operative date of the proposed rule change would have up to four years to re-associate with a firm and register as a representative without having to retake the SIE. However, the four-year expiration period in the proposed rule change extends only to the SIE, and not the representative-level and principal-level registrations. The representative-level and principal-level registrations would continue to be subject to a two year expiration period as is the case today.

J. Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member (Proposed Exchange Rule 1900, Interpretation and Policy .09)

The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .09, to provide a process whereby individuals working for a financial services industry affiliate of a Member[40] would be able to terminate their registrations with the Member and be granted a waiver of their requalification requirements upon re-registering with a Member, provided the firm that is requesting the waiver and the individual satisfy the criteria for a Financial Services Affiliate (''FSA'') waiver.[41] The purpose of the FSA waiver is to provide a firm greater flexibility to move personnel, including senior and middle management, between the firm and its financial services affiliate(s) so that they may gain organizational skills and better knowledge of products developed by the affiliate(s) without the individuals having to requalify by examination each time they return to the firm.[42]

Under the waiver process in proposed Exchange Rule 1900, Interpretation and Policy .09, the first time a registered person is designated as eligible for a waiver based on the FSA criteria, the Member with which the individual is registered would notify the Exchange of the FSA designation. The Member would concurrently file a full Form U5 terminating the individual's registration with the firm, which would also terminate the individual's other SRO and state registrations.

To be eligible for initial designation as an FSA-eligible person by a Member, an individual must have been registered for a total of five years within the most recent 10-year period prior to the designation, including for the most recent year with that Member.[43] An

[38] *See* Exchange Rule 1304(b)(1).

[39] The Exchange proposes to delete Exchange Rule 203, Interpretation and Policy .04, in connection with the adoption of proposed Exchange Rule 1900, Interpretation and Policy .07.

[40] Proposed Exchange Rule 1900, Interpretation and Policy .09, defines a ''financial services industry affiliate of a Member'' as a legal entity that controls, is controlled by or is under common control with a Member and is regulated by the Commission, Commodity Futures Trading Commission (''CFTC''), state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent foreign regulatory authorities.

[41] There is no counterpart to proposed Exchange Rule 1900, Interpretation and Policy .09, in the Exchange's existing rules. FINRA Rule 1210.09 was adopted as a new waiver process for FINRA registration, as part of the FINRA Rule Changes. *See supra* note 11.

[42] *See supra* note 11.

[43] For purposes of this requirement, a five year period of registration with the Exchange, with FINRA or with another self-regulatory organization would be sufficient.

individual would have to satisfy these preconditions only for purposes of his or her initial designation as an FSA-eligible person, and not for any subsequent FSA designation(s). Thereafter, the individual would be eligible for a waiver for up to seven years from the date of initial designation [44] provided that the other conditions of the waiver, as described below, have been satisfied. Consequently, a Member other than the Member that initially designated an individual as an FSA-eligible person may request a waiver for the individual and more than one Member may request a waiver for the individual during the seven-year period.[45]

An individual designated as an FSA-eligible person would be subject to the Regulatory Element of CE while working for a financial services industry affiliate of a Member. The individual would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. If the individual fails to complete the prescribed Regulatory Element during the 120-day window for taking the session, he or she would lose FSA eligibility (*i.e.,* the individual would have the standard two-year period after termination to re-register without having to retake an examination). The Exchange also proposes to make corresponding changes in proposed Exchange Rule 1903 (which the Exchange proposes will replace current Exchange Rule 1304, Continuing Education for Registered Persons).

Upon registering an FSA-eligible person, a firm would file a Form U4 and request the appropriate registration(s) for the individual. The firm would also submit an examination waiver request to the Exchange,[46] similar to the process used today for waiver requests, and it would represent that the individual is eligible for an FSA waiver based on the conditions set forth below. The Exchange would review the waiver request and make a determination of whether to grant the request within 30 calendar days of receiving the request. The Exchange would summarily grant the request if the following conditions are met:

(1) Prior to the individual's initial designation as an FSA-eligible person, the individual was registered for a total of five years within the most recent 10-year period, including for the most recent year with the Member that initially designated the individual as an FSA-eligible person;

(2) The waiver request is made within seven years of the individual's initial designation as an FSA-eligible person by a Member;

(3) The initial designation and any subsequent designation(s) were made concurrently with the filing of the individual's related Form U5;

(4) The individual continuously worked for the financial services affiliate(s) of a Member since the last Form U5 filing;

(5) The individual has complied with the Regulatory Element of CE; and

(6) The individual does not have any pending or adverse regulatory matters, or terminations, that are reportable on the Form U4, and has not otherwise been subject to a statutory disqualification while the individual was designated as an FSA-eligible person with a Member.

Following the Form U5 filing, an individual could move between the financial services affiliates of a Member so long as the individual is continuously working for an affiliate. Further, a Member could submit multiple waiver requests for the individual, provided that the waiver requests are made during the course of the seven-year period.[47] An individual who has been designated as an FSA-eligible person by a Member would not be able to take additional examinations to gain additional registrations while working for a financial services affiliate of a Member.

K. Status of Persons Serving in the Armed Forces of the United States (Proposed Exchange Rule 1900, Interpretation and Policy .10)

The Exchange proposes to adopt Exchange Rule 1900, Interpretation and Policy .10, Status of Persons Serving in the Armed Forces of the United States.[48] Proposed Exchange Rule 1900, Interpretation and Policy .10(a), would permit a registered person of a Member who volunteers for or is called into active duty in the Armed Forces of the United States to be placed, after proper notification to the Exchange, on inactive status. The registered person would not need to be re-registered by such Member upon his or her return to active employment with the Member. The registered person would remain eligible to receive transaction-related compensation, including continuing commissions, and the employing Member may allow the registered person to enter into an arrangement with another registered person of the Member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, because such persons would be inactive, they could not perform any of the functions and responsibilities performed by a registered person, nor would they be required to complete either the continuing education Regulatory Element or Firm Element set forth in proposed Exchange Rule 1903 during the pendency of such inactive status.[49]

[44] Individuals would be eligible for a single, fixed seven-year period from the date of initial designation, and the period would not be tolled or renewed.

[45] The following examples illustrate this point:

Example 1. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate. Firm A does not submit a waiver request for the individual. After working for Firm A's financial services affiliate for three years, the individual directly joins Firm B's financial services affiliate for three years. Firm B then submits a waiver request to register the individual.

Example 2. Same as Example 1, but the individual directly joins Firm B after working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

Example 3. Firm A designates an individual as an FSA-eligible person by notifying the Exchange and files a Form U5. The individual joins Firm A's financial services affiliate for three years. Firm A then submits a waiver request to reregister the individual. After working for Firm A in a registered capacity for six months, Firm A re-designates the individual as an FSA-eligible person by notifying FINRA and files a Form U5. The individual rejoins Firm A's financial services affiliate for two years, after which the individual directly joins Firm B's financial services affiliate for one year. Firm B then submits a waiver request to register the individual.

Example 4. Same as Example 3, but the individual directly joins Firm B after the second period of working for Firm A's financial services affiliate, and Firm B submits a waiver request to register the individual at that point in time.

[46] The Exchange would consider a waiver of the representative-level qualification examination(s), the principal-level qualification examination(s) and the SIE, as applicable.

[47] For example, if a Member submits a waiver request for an FSA-eligible person who has been working for a financial services affiliate of the Member for three years and re-registers the individual, the Member could subsequently file a Form U5 and re-designate the individual as an FSA-eligible person. Moreover, if the individual works with a financial services affiliate of the Member for another three years, the Member could submit a second waiver request and re-register the individual upon returning to the Member.

[48] There is no counterpart to proposed Exchange Rule 1900, Interpretation and Policy .10, in the Exchange's current rules.

[49] The relief provided in proposed Exchange Rule 1900, Interpretation and Policy .10(a), would be available to a registered person during the period that such person remains registered with the Member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another Member upon completion of his or her active duty. The relief would apply only to a person registered with a Member and only while the person remains on active military duty. Further, the Member with which such person is registered would be required to promptly notify the Exchange of such person's return to active employment with the Member.

Pursuant to proposed Exchange Rule 1900, Interpretation and Policy .10(b), a Member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to the Exchange, on inactive status while the Member remains on active military duty, would not be required to pay dues or assessments during the pendency of such inactive status and would not be required to pay an admission fee upon return to active participation in the securities business. This relief would be available only to a sole proprietor Member and only while the person remains on active military duty, and the sole proprietor would be required to promptly notify the Exchange of his or her return to active participation in the securities business.

Pursuant to proposed Exchange Rule 1900, Interpretation and Policy .10(c), if a person who was formerly registered with a Member volunteers for or is called into active duty in the Armed Forces of the United States at any time within two years after the date the person ceased to be registered with a Member, the Exchange shall defer the lapse of registration requirements set forth in proposed Exchange Rule 1900, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE). The Exchange would defer the lapse of registration requirements and the SIE commencing on the date the person begins actively serving in the Armed Forces of the United States, provided that the Exchange is properly notified of the person's period of active military service within 90 days following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral will terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person does not re-register with a Member within 90 days following his or her completion of active service in the Armed Forces of the United States, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE shall consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 1900, Interpretation and Policy .08, reduced by the period of time between the person's termination of registration and beginning of active service in the Armed Forces of the United States.

Further, under proposed Exchange Rule 1900, Interpretation and Policy .10(c), if a person placed on inactive status while serving in the Armed Forces of the United States ceases to be registered with a Member, the Exchange would defer the lapse of registration requirements set forth in proposed Exchange Rule 1900, Interpretation and Policy .08 (*i.e.,* toll the two-year expiration period for representative and principal qualification examinations), and the lapse of the SIE (*i.e.,* toll the four-year expiration period for the SIE) during the pendency of his or her active service in the Armed Forces of the United States. The Exchange would defer the lapse of registration requirements based on existing information in the CRD system, provided that the Exchange is properly notified of the person's period of active military service within two years following his or her completion of active service or upon his or her re-registration with a Member, whichever occurs first. The deferral would terminate 90 days following the person's completion of active service in the Armed Forces of the United States. Accordingly, if such person did not re-register with a Member within 90 days following completion of active service, the amount of time in which the person must become re-registered with a Member without being subject to a representative or principal qualification examination or the SIE would consist of the standard two-year period for representative and principal qualification examinations or the standard four-year period for the SIE, whichever is applicable, as provided in proposed Exchange Rule 1900, Interpretation and Policy .08.[50]

L. Impermissible Registrations (Proposed Exchange Rule 1900, Interpretation and Policy .11)

Current Exchange Rule 203(a) prohibits a Member from maintaining a registration with the Exchange for any person (1) who is no longer active in the Member's securities business, (2) who is no longer functioning in the registered capacity, or (3) where the sole purpose is to avoid an examination requirement. This rule also prohibits a Member from applying for the registration of a person as representative or principal where the Member does not intend to employ the person in its securities business. These prohibitions do not apply to the current permissive registration categories identified in Exchange Rule 203(a).

In light of proposed Exchange Rule 1900, Interpretation and Policy .02, Permissive Registrations, discussed above, the Exchange proposes to delete these provisions of current Exchange Rule 203(a) and instead adopt proposed Exchange Rule 1900, Interpretation and Policy .11, prohibiting a Member from registering or maintaining the registration of a person unless the registration is consistent with the requirements of proposed Exchange Rule 1900.[51]

M. Registration Categories (Proposed Exchange Rule 1901)

The Exchange proposes to adopt new and revised registration category rules and related definitions in proposed Exchange Rule 1901, Registration Categories.[52]

1. Definitions (Proposed Exchange Rule 1901(a)) [53]

The Exchanges proposes to adopt Exchange Rule 1901(a) to define certain registration categories and terms used throughout the Exchange's new proposed 1900s Series of rules. First, the Exchange proposes to adopt a definition for the term ''actively engaged in the management of the Member's securities business,'' which is used to describe the functions of a ''principal,'' as more fully discussed below.[54] The Exchange proposes that the term ''actively engaged in the management of the Member's securities business'' means the management of, and the implementation of corporate policies related to, such business, as well as managerial decision-making authority

[50] See Nasdaq Stock Market, General 4 Regulation, Section 1 Registration, Qualification and Continuing Education, Rule 1.1210.10(c).

[51] As discussed above, the Exchange also proposes to adopt Exchange Rule 1900, Interpretation and Policy .12, Application for Registration and Jurisdiction, which is not included in FINRA Rule 1210. Proposed Exchange Rule 1900, Interpretation and Policy .12, is based upon portions of current Exchange Rules 203 and 1301. *See also supra* note 16.

[52] For ease of reference, the Exchange proposes to adopt as Exchange Rule 1901, Interpretation and Policy .07, in chart form, a Summary of Qualification Requirements for each of the Exchange's permitted registration categories discussed below.

[53] The Exchange notes that proposed Exchange Rule 1901 differs from the Nasdaq Stock Market rule filing in that the Exchange has consolidated the definitions for various registration categories into one section, proposed Exchange Rule 1901(a), whereas the Nasdaq Stock Market filing includes the registration category definition in each individual section pertaining to that specific registration category type. *See supra* note 14.

[54] *See also supra* note 6.

with respect to the Member's securities business and management-level responsibilities for supervising any aspect of such business, such as serving as a voting member of the Member's executive, management or operations committees.

Next, the Exchange proposes to adopt a definition for the term ''Financial and Operations Principal,'' which the Exchange proposes to mean a person associated with a Member whose duties include (i) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; (ii) final preparation of such reports; (iii) supervision of individuals who assist in the preparation of such reports; (iv) supervision of and responsibility for individuals who are involved in the actual maintenance of the Member's books and records from which such reports are derived; (v) supervision and/or performance of the Member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; (vi) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the Member's back office operations; and (vii) any other matter involving the financial and operational management of the Member.

Next, the Exchange proposes to adopt a definition for the term ''principal'' and include it in newly proposed Exchange Rule 1901(a). The Exchange proposes to adopt a definition of ''principal,'' which would mean any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). The term ''principal'' also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules.

Finally, the Exchange proposes to adopt a definition for the term ''representative'' in proposed Exchange Rule 1901(a). Currently, the Exchange's rules do not define the term ''representative,'' although Exchange Rule 1302(b) states that persons who perform duties for the Member which are customarily performed by sales representatives or branch office managers shall be designated as representatives of the Member. The Exchange now proposes to delete Exchange Rule 1302(b), as more fully discussed herein, and adopt a definition of the term ''representative'' in proposed Exchange Rule 1901(a). Proposed Exchange Rule 1901(a) would define the term ''representative'' as any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions.

2. Principal Registration Categories (Proposed Exchange Rule 1901(b))

i. General Securities Principal (Proposed Rule 1901(b)(1))

The Exchange currently does not impose a General Securities Principal registration obligation. The Exchange proposes to adopt Exchange Rule 1901(b)(1), which would establish an obligation to register as a General Securities Principal, subject to certain exceptions.[55] Proposed Exchange Rule 1901(b)(1) states that each principal is required to register with the Exchange as a General Securities Principal, except that if a principal's activities are limited to the functions of a Compliance Official, a Financial and Operations Principal, a Securities Trader Principal, a Securities Trader Compliance Officer, or a Registered Options Principal, then the principal shall appropriately register in one or more of those categories.[56] Proposed Exchange Rule 1901(b)(1)(i)(C) further provides that if a principal's activities are limited solely to the functions of a General Securities Sales Supervisor, then the principal may appropriately register in that category in lieu of registering as a General Securities Principal, provided, however, that if the principal is engaged in options sales activities, he or she would be required to register as a General Securities Sales Supervisor or as a Registered Options Principal.[57]

Proposed Exchange Rule 1901(b)(1)(ii) requires that an individual registering as a General Securities Principal satisfy the General Securities Representative prerequisite registration and pass the General Securities Principal qualification examination.

The Exchange does not propose to adopt FINRA Rule 1220(a)(2)(B), which permits an individual registering as a General Securities Principal after October 1, 2018 to register as a General Securities Sales Supervisor and to pass the General Securities Principal Sales Supervisor Module qualification examination. The Exchange believes that individuals registering as General Securities Principals should be required to demonstrate their competence for that role by passing the General Securities Principal qualification examination.[58]

ii. Compliance Official (Proposed Exchange Rule 1901(b)(2))

Currently, Exchange Rule 203(f) requires each Member and Member organization that is a registered broker-dealer to designate a Chief Compliance Officer on Schedule A of Form BD and requires individuals designated as a Chief Compliance Officer to register with the Exchange and pass the appropriate heightened qualification examination(s) as prescribed by the Exchange.[59]

[55] There is no counterpart to proposed Exchange Rule 1901(b)(1) in the Exchange's current rules.

[56] The Exchange proposes to recognize the General Securities Principal registration category for the first time in this proposed rule change.

[57] *See* Nasdaq Stock Market, General 4, Regulation, Section 1, Registration, Qualification and Continuing Education, Rule 1.1220(a)(2)(A)(i)–(iv). Proposed Exchange Rule 1901(b)(1) deviates somewhat from the counterpart FINRA rule in that it does not offer various limited registration categories provided for in FINRA Rule 1220(a)(2)(A). The Exchange therefore proposes to reserve Exchange Rules 1901(b)(1)(i)(B) and (D).

[58] Proposed Exchange Rule 1901(b)(1) generally tracks FINRA Rule 1220(a)(2), except that it omits references to a number of registration categories which FINRA recognizes but that the Exchange does not, and it includes a reference to the Securities Trader Compliance Officer category which the Exchange proposes to recognize, but which FINRA does not. Additionally, proposed Rule 1901(b)(1)(i)(A) extends that provision's exception to the General Securities Principal registration requirement to certain principals whose activities are ''limited to'' (rather than ''include'') the functions of a more limited principal. The Exchange believes that activities ''limited to'' expresses the intent of that exception more accurately than activities that ''include.''

[59] Exchange Rule 203(f) further provides that a person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to: (1) Any statutory disqualification as defined in Section 3(a)(39) of the Act; (2) a suspension; (3) the imposition of a fine of $5,000 or more for a violation of any provision of any securities law or regulation, or any agreement with, rule or standard of conduct of any securities governmental agency, or securities self-regulatory organization; or (4) the imposition of a fine of $5,000 or more by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; shall be required to register in this heightened category of registration as prescribed by the Exchange, but shall be exempt from the requirement to pass the heightened qualification examination as prescribed by the Exchange.

The Exchange proposes to delete Exchange Rule 203(f) and adopt Exchange Rule 1901(b)(2) in its place. Proposed Exchange Rule 1901(b)(2) would provide that each person designated as a Chief Compliance Officer on Schedule A of Form BD shall be required to register with the Exchange as a General Securities Principal, provided that such person may instead register as a Compliance Official if his or her duties do not include supervision of trading. All individuals registering as Compliance Official would be required, prior to or concurrent with such registration, to pass the Compliance Official qualification examination. However, pursuant to Exchange Rule 1901(b)(2)(iii), an individual designated as a Chief Compliance Officer on Schedule A of Form BD of a Member that is engaged in limited securities business may be registered in a principal category under proposed Exchange Rule 1901(b) that corresponds to the limited scope of the Member's business.

Additionally, proposed Exchange Rule 1901(b)(2)(iv) would provide that an individual designated as a Chief Compliance Officer on Schedule A of Form BD may register and qualify as a Securities Trader Compliance Officer if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act and that controls, is controlled by, or is under common control with a Member. All individuals registering as Securities Trader Compliance Officers would be required to first become registered pursuant to paragraph (c)(3) as a Securities Trader, and to pass the Compliance Official qualification exam.[60]

iii. Financial and Operations Principal (Proposed Exchange Rule 1901(b)(3))

Current Exchange Rule 203(e) provides that each Member subject to Rule 15c3–1 of the Act must designate a Financial/Operations Principal. It specifies that the duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the Member complies with applicable financial and operational requirements under the Rules and the Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. It requires Financial/Operations Principal to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). It further provides that each Financial/Operations Principal designated by a Member shall be registered in that capacity with the Exchange as prescribed by the Exchange, and that a Financial/Operations Principal of a Member may be a full-time employee, a part-time employee or independent contractor of the Member.

The Exchange proposes to delete Exchange Rule 203(e) and adopt in its place Exchange Rule 1901(b)(3). Under the new rule, every Member of the Exchange that is operating pursuant to the provisions of Rules 15c3–1(a)(1)(ii), (a)(2)(i) or (a)(8) of the Commission, shall designate at least one Financial and Operations Principal who shall be responsible for performing the duties described in paragraph (a) of proposed Exchange Rule 1901. In addition, each person associated with a Member who performs such duties shall be required to register as a Financial and Operations Principal with the Exchange.

Proposed Exchange Rule 1901(b)(3)(ii) would require all individuals registering as a Financial and Operations Principal to pass the Financial and Operations Principal qualification examination before such registration may become effective. Finally, proposed Exchange Rule 1901(b)(3)(iii) would prohibit a person registered solely as a Financial and Operations Principal from functioning in a principal capacity with responsibility over any area of business activity not described in paragraph (a) of the rule for a Financial and Operations Principal.[61]

iv. Investment Banking Principal (Proposed Exchange Rule 1901(b)(4))

The Exchange does not recognize the Investment Banking Principal registration category and proposes to reserve Exchange Rule 1901(b)(4), retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Principal (Proposed Exchange Rule 1901(b)(5))

The Exchange does not recognize the Research Principal registration category and proposes to reserve Exchange Rule 1901(b)(5), retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Securities Trader Principal (Proposed Exchange Rule 1901(b)(6))

Current Exchange Rule 203(c) provides that Members that are individuals and associated persons of Members included within the definition of Option Principal in Exchange Rule 100 and who will have supervisory responsibility over the securities trading activities described in Exchange Rule 203(d) shall become qualified and registered as a Securities Trader Principal. To qualify for registration as a Securities Trader Principal, such person shall become qualified and registered as a Securities Trader under Rule 1302(e) and pass the SIE and General Securities Principal qualification examination (Series 24). A person who is qualified and registered as a Securities Trader Principal under this provision may only have supervisory responsibility over the Securities Trader activities specified in Exchange Rule 203(d), unless such person is separately qualified and registered in another appropriate principal registration category, such as the General Securities Principal registration category. Current Exchange Rule 203(c)(2) provides that a person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in Exchange Rule 203(d), unless such person has also become qualified and registered as a Securities Trader under Exchange Rule 1302(e) and become registered as a Securities Trader Principal.

The Exchange proposes to delete Exchange Rule 203(c) and adopt in its place Exchange Rule 1901(b)(6), Securities Trader Principal. Proposed Exchange Rule 1901(b)(6) would require

[60] Proposed Exchange Rule 1901(b)(2) differs from FINRA Rule 1220(a)(3), Compliance Officer, as the Exchange does not recognize the Compliance Officer registration category. Similarly, FINRA does not recognize the Compliance Official or the Securities Trader Compliance Officer registration categories which the Exchange proposes to recognize. However, FINRA Rule 1220(a)(3), like proposed Exchange Rule 1901(b)(2), offers an exception pursuant to which a Chief Compliance Officer designated on Schedule A of Form BD may register in a principal category that corresponds to the limited scope of the Member's business.

[61] FINRA Rule 1220(a)(4) differs from proposed Exchange Rule 1901(b)(3) in that it includes an Introducing Broker-Dealer Financial and Operations Principal registration requirement. Additionally, proposed Exchange Rule 1901(b)(3) contains a requirement, which the FINRA rule does not, that each person associated with a Member who performs the duties of a Financial and Operations Principal must register as such with the Exchange. Further, as discussed above, the Exchange does not propose to adopt a Principal Financial Officer or Principal Operations Officer requirement similar to FINRA Rule 1220(a)(4)(B), as it believes the Financial and Operations Principal requirement is sufficient.

that a principal responsible for supervising the securities trading activities specified in proposed Exchange Rule 1901(c)(3)[62] register as a Securities Trader Principal. The proposed rule requires individuals registering as Securities Trader Principals to be registered as Securities Traders and to pass the General Securities Principal qualification examination.

vii. Registered Options Principal (Proposed Exchange Rule 1901(b)(7))

The Exchange proposes to adopt Exchange Rule 1901(b)(7), Registered Options Principal, which would require that each Member that is engaged in transactions in options with the public have at least one Registered Options Principal.[63] Currently, Exchange Rule 100, Definitions, provides a definition for an ''Options Principal.'' In accordance with the proposal to adopt Exchange Rule 1901(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' in Exchange Rule 100. As discussed below, the Exchange proposes to adopt a corresponding definition for a ''Registered Options Principal'' in Exchange Rule 100, which would refer to proposed Exchange Rule 1901(b)(7). In addition, each principal as defined in proposed Exchange Rule 1901(a) who is responsible for supervising a Member's options sales practices with the public would be required to register with the Exchange as a Registered Options Principal, with one exception, as follows. If a principal's options activities are limited solely to those activities that may be supervised by a General Securities Sales Supervisor, then such person may register as a General Securities Sales Supervisor pursuant to paragraph (b)(9) of this Rule in lieu of registering as a Registered Options Principal.[64]

Pursuant to proposed Exchange Rule 1901(b)(7)(ii), subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, each person registered with the Exchange as a Registered Options Principal on October 1, 2018 and each person who was registered as a Registered Options Principal within two years prior to October 1, 2018 would be qualified to register as a Registered Options Principal without passing any additional qualification examinations. All other individuals registering as Registered Options Principals after October 1, 2018 would, prior to or concurrent with such registration, be required to become registered pursuant to proposed Exchange Rule 1901(c)(1) as a General Securities Representative and pass the Registered Options Principal qualification examination.[65]

viii. Government Securities Principal (Proposed Exchange Rule 1901(b)(8))

The Exchange does not recognize the Government Securities Principal registration category and proposes to reserve Exchange Rule 1901(b)(8), retaining the caption solely to facilitate comparison with FINRA's rules.

ix. General Securities Sales Supervisor (Proposed Exchange Rules 1901(b)(9) and Interpretation and Policy .04)

The Exchange proposes to adopt Exchange Rule 1901(b)(9), General Securities Sales Supervisor, as well as Interpretation and Policy .04 to Exchange Rule 1901, which explains the purpose of the General Securities Sales Supervisor registration category.[66] Proposed Exchange Rule 1901(b)(9) provides that each principal, as defined in proposed paragraph (a) of this Rule, may register with the Exchange as a General Securities Sales Supervisor if his or her supervisory responsibilities in the securities business of a Member are limited to the securities sales activities of the Member, including the approval of customer accounts, training of sales and sales supervisory personnel and the maintenance of records of original entry or ledger accounts of the Member required to be maintained in branch offices by Exchange Act record-keeping rules. Further, a person registered solely as a General Securities Sales Supervisor would not be qualified to perform any of the following activities: (i) Supervision of market making commitments; (ii) supervision of the custody of broker-dealer or customer funds or securities for purposes of Exchange Act Rule 15c3–3; or (iii) supervision of overall compliance with financial responsibility rules for broker-dealers promulgated pursuant to the provisions of the Exchange Act.[67]

Each person seeking to register as a General Securities Sales Supervisor would be required, prior to or concurrent with such registration, to become registered pursuant to proposed Exchange Rule 1901(c)(1) of the rule as a General Securities Representative and pass the General Securities Sales

[62] Proposed Exchange Rule 1901(c)(3), discussed below, provides for representative-level registration in the ''Securities Trader'' category.

[63] Proposed Exchange Rule 1901(b)(7) differs from FINRA Rule 1220(a)(8) in that it omits certain references to other specific FINRA rules.

[64] Current Exchange Rule 1301(a) provides that no Member shall be approved to transact options business with the public until those associated persons who are designated as Options Principals have been approved by and registered with the Exchange. Persons engaged in the supervision of options sales practices or a person to whom the designated general partner or executive officer (pursuant to Rule 1308) or another Registered Options Principal delegates the authority to supervise options sales practices shall be designated as Options Principals. Exchange Rule 1301(e) provides that individuals who are delegated responsibility pursuant to Rule 1308 for the acceptance of discretionary accounts, for approving exceptions to a Member's criteria or standards for uncovered options accounts, and for approval of communications, shall be designated as Options Principals and are required to qualify as an Options Principal by passing the SIE, the General Securities Representative qualification examination (Series 7) and the Registered Options Principal Qualification Examination (Series 4). The foregoing provisions of Exchange Rule 1301 are specific to conducting an options business with the public and are not proposed to be amended in this proposed rule change, other than conforming all references to ''Options Principal'' with ''Registered Options Principal,'' as more fully discussed herein. However, Exchange Rules 1301(b) and (c) contain provisions regarding submission of Forms U4 and U5 to WebCRD that are duplicative of the proposed 1900 Series of rules, in particular proposed Exchange Rule 1900, Interpretation and Policy .12, Application for Registration and Jurisdiction, and proposed Exchange Rule 1904, Electronic Filing Requirements for Electronic Forms, and are therefore proposed to be deleted. Current Exchange Rule 1301(d) provides that individuals engaged in the supervision of options sales practices and designated as Options Principals are required to qualify as an Options Principal by passing the Registered Options Principals Qualification Examination (Series 4) or the Sales Supervisor Qualification Examination (Series 9/10), and is proposed to be deleted in view of proposed Exchange Rule 1901(b)(7). Exchange Rule 203(g), which merely serves as a cross-reference to Exchange Rules 1301 and 1302, is unnecessary and is therefore proposed to be deleted with the rest of Exchange Rule 203.

[65] Although the Exchange does not currently list security futures products, it also proposes to adopt Exchange Rule 1901, Interpretation and Policy .02, which provides that each person who is registered with the Exchange as a General Securities Representative, Registered Options Principal, or General Securities Sales Supervisor shall be eligible to engage in security futures activities as a principal provided that such individual completes a Firm Element program as set forth in proposed Exchange Rule 1903 that addresses security futures products before such person engages in security futures activities. Unlike FINRA Rule 1220.02, proposed Exchange Rule 1901, Interpretation and Policy .02, omits references to United Kingdom Securities Representatives and Canada Securities Representatives, which are registration categories the Exchange does not recognize. In addition, the Exchange also proposes to adopt Exchange Rule 1901, Interpretation and Policy .03, which requires notification to the Exchange in the event a Member's sole Registered Options Principal is terminated, resigns, becomes incapacitated or is otherwise unable to perform the duties of a Registered Options Principal, and imposes certain restrictions on the Member's options business in that event.

[66] Proposed Exchange Rule 1901(b)(9) has no counterpart in the Exchange's current rules.

[67] Proposed Exchange Rule 1901(b)(9), however, omits the FINRA Rule 1220(a)(10) prohibition against supervision of the origination and structuring of underwritings as unnecessary, as this kind activity does not fall within the scope of ''securities trading'' covered by the Exchange's new 1900 Series of rules.

Supervisor qualification examinations.[68]

x. Investment Company and Variable Contracts Products Principal (Proposed Exchange Rule 1901(b)(10))

The Exchange does not recognize the Investment Company and Variable Contracts Products Principal category and is reserving proposed Exchange Rule 1901(b)(10), retaining the caption solely to facilitate comparison with FINRA's rules.

xi. Direct Participation Programs Principal (Proposed Exchange Rule 1901(b)(11))

The Exchange does not recognize the Direct Participation Programs Principal registration category and is reserving proposed Exchange Rule 1901(b)(11), retaining the caption solely to facilitate comparison with FINRA's rules.

xii. Private Securities Offerings Principal (Proposed Exchange Rule 1901(b)(12))

The Exchange does not recognize the Private Securities Offerings Principal registration category and is reserving proposed Exchange Rule 1901(b)(12), retaining the caption solely to facilitate comparison with FINRA's rules.

xiii. Supervisory Analyst (Proposed Exchange Rule 1901(b)(13))

The Exchange does not recognize the Supervisory Analyst registration category and is reserving proposed Exchange Rule 1901(b)(13), retaining the caption solely to facilitate comparison with FINRA's rules.

3. Representative Registration Categories (Proposed Exchange Rule 1901(c))

i. General Securities Representative (Proposed Exchange Rule 1901(c)(1))

The Exchange proposes to adopt Exchange Rule 1901(c)(1), General Securities Representative. Proposed Exchange Rule 1901(c)(1)(i) would state that each representative as defined in proposed Exchange Rule 1901(a) is required to register with the Exchange as a General Securities Representative, subject to the exception that if a representative's activities include the functions of a Securities Trader, as specified in this Rule, then such person shall appropriately register as a Securities Trader.

Further, consistent with the proposed restructuring of the representative-level examinations, proposed Exchange Rule 1901(c)(1)(ii) would require that individuals registering as General Securities Representatives pass the SIE and the General Securities Representative examination except that individuals registered as a General Securities Representatives within two years prior to October 1, 2018 would be qualified to register as General Securities Representatives without passing any additional qualification examinations.[69]

In addition, the Exchange proposes to adopt Exchange Rule 1901, Interpretation and Policy .01, to provide certain individuals who are associated persons of firms and who hold specific foreign registrations an alternative, more flexible, process to obtain an Exchange representative-level registration. The Exchange believes that there is sufficient overlap between the SIE and these foreign qualification requirements to permit them to act as exemptions to the SIE. In particular, pursuant to proposed Exchange Rule 1901, Interpretation and Policy .01, individuals who are in good standing as representatives with the Financial Conduct Authority in the United Kingdom or with a Canadian stock exchange or securities regulator would be exempt from the requirement to pass the SIE, and thus would be required only to pass a specialized knowledge examination to register with the Exchange as a representative. This proposed rule would provide individuals with a United Kingdom or Canadian qualification more flexibility to obtain an Exchange representative-level registration.

ii. Operations Professional (Proposed Exchange Rule 1901(c)(2))

The Exchange does not recognize the Operations Professional registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(2), Operations Professional, and related Interpretation and Policy .05 to proposed Exchange Rule 1901, Scope of Operations Professional Requirement, retaining the caption solely to facilitate comparison with FINRA's rules.

iii. Securities Trader (Proposed Exchange Rule 1901(c)(3))

Pursuant to current Exchange Rule 203(d)(1) and (2), Members that are individuals and associated persons of Members must register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or foreign currency options on the Exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the Member. In addition, an applicant must become qualified as a Securities Trader by passing the Securities Trader Qualification examination (Series 57) as stated in current Exchange Rule 1302(e).

The Exchange proposes to delete Exchange Rule 203(d), and replace it with proposed Exchange Rule 1901(c)(3).[70] Proposed Exchange Rule 1901(c)(3) would require each representative as defined in paragraph (a) of this Rule to register with the Exchange as a Securities Trader if, with respect to transactions in equity, preferred or convertible debt securities, or options such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities other than a person associated with a Member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with a Member.

Additionally, proposed Exchange Rule 1901(c)(3)(i) would require each person associated with a Member who is: (i) Primarily responsible for the design, development or significant modification of an algorithmic trading strategy relating to equity, preferred or convertible debt securities or options; or (ii) responsible for the day-to-day supervision or direction of such activities to register with the Exchange as a Securities Trader.[71]

[68] Unlike FINRA Rule 1220.04, proposed Exchange Rule 1901, Interpretation and Policy .04, refers to ''multiple exchanges'' rather than listing the various exchanges where a sales principal might be required to qualify in the absence of the General Securities Sales Supervisor registration category. It also omits FINRA internal cross-references.

[69] Proposed Exchange Rule 1901(c)(1)(i) differs from FINRA Rule 1220(b)(2)(A) in that it omits references to various registration categories which FINRA recognizes but which the Exchange does not propose to recognize.

[70] Proposed Exchange Rule 1901(c)(3)(i) differs from FINRA Rule 1220(b)(4)(A) in that it applies to trading on the Exchange while the FINRA rule is limited to the specified trading which is ''effected otherwise than on a securities exchange.'' Additionally, the FINRA rule does not specifically extend to options trading.

[71] As noted above, this new registration requirement was added to the FINRA rulebook. The Exchange has determined to add a parallel requirement to its own rules, but also to add options to the scope of products within the

Continued

For purposes of this proposed new registration requirement an ''algorithmic trading strategy'' would be an automated system that generates or routes orders (or order-related messages) but does not include an automated system that solely routes orders received in their entirety to a market center. The proposed registration requirement applies to orders and order related messages whether ultimately routed or sent to be routed to an exchange or over the counter. An order router alone would not constitute an algorithmic trading strategy. However, an order router that performs any additional functions would be considered an algorithmic trading strategy. An algorithm that solely generates trading ideas or investment allocations—including an automated investment service that constructs portfolio recommendations—but that is not equipped to automatically generate orders and order-related messages to effectuate such trading ideas into the market—whether independently or via a linked router—would not constitute an algorithmic trading strategy.[72] The associated persons covered by the expanded registration requirement would be required to pass the requisite qualification examination and be subject to the same continuing education requirements that are applicable to individual Securities Traders. The Exchange believes that potentially problematic conduct stemming from algorithmic trading strategies—such as failure to check for order accuracy, inappropriate levels of messaging traffic, and inadequate risk management controls—could be reduced or prevented, in part, through improved education regarding securities regulations for the specified individuals involved in the algorithm design and development process.

The proposal is intended to ensure the registration of one or more associated persons that possesses knowledge of, and responsibility for, both the design of the intended trading strategy and the technological implementation of the strategy, sufficient to evaluate whether the resulting product is designed to achieve regulatory compliance in addition to business objectives. For example, a lead developer who liaises with a head trader regarding the head trader's desired algorithmic trading strategy and is primarily responsible for the supervision of the development of the algorithm to meet such objectives must be registered under the proposal as the associated person primarily responsible for the development of the algorithmic trading strategy and supervising or directing the team of developers. Individuals under the lead developer's supervision would not be required to register under the proposal if they are not primarily responsible for the development of the algorithmic trading strategy or are not responsible for the day-to-day supervision or direction of others on the team. Under this scenario, the person on the business side that is primarily responsible for the design of the algorithmic trading strategy, as communicated to the lead developer, also would be required to register. In the event of a significant modification to the algorithm, Members, likewise, would be required to ensure that the associated person primarily responsible for the significant modification (or the associated person supervising or directing such activity), is registered as a Securities Trader.

A Member employing an algorithm is responsible for the algorithm's activities whether the algorithm is designed or developed in house or by a third-party. Thus, in all cases, robust supervisory procedures, both before and after deployment of an algorithmic trading strategy, are a key component in protecting against problematic behavior stemming from algorithmic trading. In addition, associated persons responsible for monitoring or reviewing the performance of an algorithmic trading strategy must be registered, and a Member's trading activity must always be supervised by an appropriately registered person. Therefore, even where a firm purchases an algorithm off-the-shelf and does not significantly modify the algorithm, the associated person responsible for monitoring or reviewing the performance of the algorithm would be required to be registered.

Pursuant to proposed Exchange Rule 1901(c)(3)(ii), each person registered as a Securities Trader on October 1, 2018 and each person who was registered as a Securities Trader within two years prior to October 1, 2018 would be qualified to register as a Securities Trader without passing any additional qualification examinations. All other individuals registering as Securities Traders after October 1, 2018 would be required, prior to or concurrent with such registration, to pass the SIE and the Securities Trader qualification examination.

Further, the Exchange proposes to delete Exchange Rule 1302(e) in connection with its proposal to adopt Exchange Rule 1901(c)(3), which defines the requirements and qualifications for a Securities Trader, as well as its proposal to amend Exchange Rule 100 to insert definitions for ''proprietary trading'' and ''proprietary trading firm,'' as described below. Accordingly, Exchange Rule 1302(e) is repetitive and no longer necessary in light of the Exchange's other proposed changes.

iv. Investment Banking Representative (Proposed Exchange Rule 1901(c)(4))

The Exchange does not recognize the Investment Banking Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(4), Investment Banking Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

v. Research Analyst (Proposed Exchange Rule 1901(c)(5))

The Exchange does not recognize the Research Analyst registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(5), Research Analyst, retaining the caption solely to facilitate comparison with FINRA's rules.

vi. Investment Company and Variable Products Representative (Proposed Exchange Rule 1901(c)(6))

The Exchange does not recognize the Investment Company and Variable Products Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(6), Investment Company and Variable Products Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

vii. Direct Participation Programs Representative (Proposed Exchange Rule 1901(c)(7))

The Exchange does not recognize the Direct Participation Programs Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(7), Direct Participation Programs Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

proposed rule's coverage. *See* Securities Exchange Act Release No. 77551 (April 7, 2016), 81 FR 21914 (April 13, 2016) (SR–FINRA–2016–007) (Order Approving a Proposed Rule Change to Require Registration as Securities Traders of Associated Persons Primarily Responsible for the Design, Development, Significant Modification of Algorithmic Trading Strategies or Responsible for the Day-to-Day Supervision of Such Activities).

[72] *See supra* note 12.

viii. Private Securities Offerings Representative (Proposed Exchange Rule 1901(c)(8))

The Exchange does not recognize the Private Securities Offerings Representative registration category for its associated persons. The Exchange therefore proposes to reserve Exchange Rule 1901(c)(8), Private Securities Offerings Representative, retaining the caption solely to facilitate comparison with FINRA's rules.

4. Eliminated Registration Categories (Proposed Exchange Rule 1901, Interpretation and Policy .06)

Proposed Exchange Rule 1901, Interpretation and Policy .06, has no practical relevance to the Exchange, but is included because the Exchange proposes to adopt rules similar to FINRA's 1200 Series, on a near uniform basis. Accordingly, proposed Exchange Rule 1901, Interpretation and Policy .06, provides that, subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, individuals who are registered with the Exchange in any capacity recognized by the Exchange immediately prior to October 1, 2018, and each person who was registered with the Exchange in such categories within two years prior to October 1, 2018, shall be eligible to maintain such registrations with the Exchange. However, if individuals registered in such categories terminate their registration with the Exchange and the registration remains terminated for two or more years, they would not be able to re-register in that category.

5. Grandfathering Provisions

In addition to the grandfathering provisions in proposed Exchange Rule 1901(b)(1)(ii) (relating to General Securities Principals) and proposed Exchange Rule 1901, Interpretation and Policy .06 (relating to the eliminated registration categories), the Exchange proposes to include grandfathering provisions in proposed Exchange Rule 1901(b)(7) (Registered Options Principal), Exchange Rule 1901(c)(1) (General Securities Representative), and Exchange Rule 1901(c)(3) (Securities Trader). Specifically, the proposed grandfathering provisions provide that, subject to the lapse of registration provisions in proposed Exchange Rule 1900, Interpretation and Policy .08, individuals who are registered in specified registration categories on the operative date of the proposed rule change and individuals who had been registered in such categories within the past two years prior to the operative date of the proposed rule change would be qualified to register in the proposed corresponding registration categories without having to take any additional examinations.

N. Associated Persons Exempt From Registration (Proposed Exchange Rules 1902 and 1902, Interpretation and Policy .01)

Current Exchange Rule 203(b) currently provides that the following individual Members and individual associated persons of Members are not required to register:

(1) Individual associated persons whose functions are solely and exclusively clerical or ministerial;

(2) individual Members and individual associated persons who are not actively engaged in the securities business;

(3) individual associated persons whose functions are related solely and exclusively to the Member's need for nominal corporate officers or for capital participation;

(4) individual associated persons whose functions are related solely and exclusively to:

(i) Transactions in commodities;

(ii) transactions in security futures; and/or

(iii) effecting transactions on the floor of another securities exchange and who are registered floor members with such exchange.

The Exchange proposes to delete Exchange Rule 203(b) and adopt provisions of Exchange Rule 203(b) in the newly proposed Exchange Rule 1902, subject to certain changes. Current Exchange Rule 203(b)(2) exempts from registration those individual Members and individual associated persons of Members who are not actively engaged in the securities business. Exchange Rule 203(b)(3) also exempts from registration those associated persons whose functions are related solely and exclusively to a Member's need for nominal corporate officers or for capital participation.[73] The Exchange believes that the determination of whether an associated person is required to register must be based on an analysis of the person's activities and functions in the context of the various registration categories. The Exchange does not believe that categorical exemptions for individual Members and individual associated persons who are not ''actively engaged'' in a Member's securities business, associated persons whose functions are related only to a Member's need for nominal corporate officers or associated persons whose functions are related only to a Member's need for capital participation is consistent with this analytical framework.[74] The Exchange therefore proposes to delete these exemptions. Exchange Rule 203(b)(4)(iii) further exempts from registration associated persons whose functions are related solely and exclusively to effecting transactions on the floor of another national securities exchange as long as they are registered as floor members with such exchange. Because exchanges have registration categories other than the floor member category, proposed Exchange Rule 1902 clarifies that the exemption applies to associated persons solely and exclusively effecting transactions on the floor of another national securities exchange, provided they are appropriately registered with such exchange.[75] Additionally, the Exchange proposes to adopt paragraph (c) of proposed Exchange Rule 1902, pursuant to which persons associated with a Member that are not citizens, nationals, or residents of the United States or any of its territories or possessions, that will conduct all of their securities activities in areas outside the jurisdiction of the United States, and that will not engage in any securities activities with or for any citizen, national or resident of the United States need not register with the Exchange.[76]

The Exchange proposes to adopt Exchange Rule 1902, Interpretation and Policy .01, to clarify that the function of accepting customer orders is not considered a clerical or ministerial function and that associated persons who accept customer orders under any circumstances are required to be

[73] These exemptions generally apply to associated persons who are corporate officers of a Member in name only to meet specific corporate legal obligations or who only provide capital for a Member, but have no other role in a Member's business.

[74] The Exchange also proposes to delete Exchange Rule 203, Interpretation and Policy .06, which specifies circumstances in which the Exchange considers an individual Member or an individual associated person to be engaged in the securities business of a Member or Member organization. The Exchange believes these determinations may be made on case by case basis, depending upon facts and circumstances.

[75] Proposed Exchange Rule 1902 differs from FINRA Rule 1230 in that it contains a number of additional exemptions, based upon current Nasdaq Stock Market Rule 1.1230, which are not included in FINRA Rule 1230. *See* Nasdaq Stock Market, General 4, Regulations, Section 1, Registration, Qualification and Continuing Education, Rule 1.1230.

[76] Individuals described by paragraph (c) of proposed Exchange Rule 1902 who are associated with FINRA members may be registered with FINRA as Foreign Associates pursuant to FINRA Rule 1220.06. FINRA eliminated this registration category effective October 1, 2018, and the Exchange never recognized it.

appropriately registered. However, the proposed rule provides that an associated person is not accepting a customer order where occasionally, when an appropriately registered person is unavailable, the associated person transcribes the order details and the registered person contacts the customer to confirm the order details before entering the order.

O. Changes to Continuing Education Requirements (Proposed Exchange Rule 1903)

As described above, current Exchange Rule 1304, Continuing Education for Registered Persons, includes a Regulatory Element and a Firm Element. The Regulatory Element applies to registered persons and consists of periodic computer-based training on regulatory, compliance, ethical, supervisory subjects and sales practice standards. The Firm Element consists of at least annual, member-developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the Member. The CE requirements set forth in Exchange Rule 1304 have been reorganized and renumbered, and are now proposed to be adopted with amendments as proposed Exchange Rule 1903.[77]

1. Regulatory Element

The Exchange proposes to replace the term ''registered person'' in current Exchange Rule 1304(a) with the term ''covered person'' and make conforming changes to proposed Exchange Rule 1903(a). For purposes of the Regulatory Element, the Exchange proposes to define the term ''covered person'' in proposed Exchange Rule 1903(a)(5), as any person registered pursuant to proposed Exchange Rule 1900, including any person who is permissively registered pursuant to proposed Exchange Rule 1900, Interpretation and Policy .02, and any person who is designated as eligible for an FSA waiver pursuant to proposed Exchange Rule 1900, Interpretation and Policy .09. The purpose of this change is to ensure that all registered persons, including those with permissive registrations, keep their knowledge of the securities industry current. The inclusion of persons designated as eligible for an FSA waiver under the term ''covered persons'' corresponds to the requirements of proposed Exchange Rule 1900, Interpretation and Policy .09. In addition, consistent with proposed Exchange Rule 1900, Interpretation and Policy .09, proposed Exchange Rule 1903(a)(1) provides that an FSA-eligible person would be subject to a Regulatory Element program that correlates to his or her most recent registration category, and CE would be based on the same cycle had the individual remained registered. The proposed rule also provides that if an FSA-eligible person fails to complete the Regulatory Element during the prescribed time frames, he or she would lose FSA eligibility.

Further, the Exchange proposes to add a rule to address the impact of failing to complete the Regulatory Element on a registered person's activities and compensation. Specifically, proposed Exchange Rule 1903(a)(2) provides that any person whose registration has been deemed inactive under the rule may not accept or solicit business or receive any compensation for the purchase or sale of securities. However, like the FINRA rule, the proposed rule provides that such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the Member with which the person is associated has a policy prohibiting such trail or residual commissions.

2. Firm Element

The Exchange believes that training in ethics and professional responsibility should apply to all covered registered persons. Therefore, proposed Exchange Rule 1903(b)(2)(ii), which provides that the Firm Element training programs must cover applicable regulatory requirements, would also require that a firm's training program cover training in ethics and professional responsibility.

P. Electronic Filing Requirements for Uniform Rules (Proposed Exchange Rule 1904)

Current Exchange Rule 203, Interpretations and Policies .01–.03, state that each individual required to register shall electronically file a Uniform Application for Securities Industry Registration (''Form U4'') through the Central Registration Depository system (''Web CRD'') operated by FINRA and to electronically submit to Web CRD any required amendments to Form U4. Further, any Member or Member organization that discharges or terminates the employment or retention of an individual required to register must comply with certain termination filing requirements, which include the filing of a Form U5. Form U4 and Form U5 electronic filing requirements applicable to options principals and representatives, as well a Form U5 requirement applicable to Members upon termination of employment of any of their registered persons, are found in Exchange Rules 1301, 1302, and 1303.

The Exchange proposes to delete current Exchange Rule 203, Interpretations and Policies .01–.03, and the electronic filing requirements of Exchange Rules 1301, 1302 and 1303, and to replace them with proposed Exchange Rule 1904, Electronic Filing Requirements for Uniform Forms, which will consolidate Form U4 and Form U5 electronic filing requirements into a single rule. The proposed rule provides that all forms required to be filed under the Exchange's registration rules including the Exchange Rule 1900 Series shall be filed through an electronic process or such other process as the Exchange may prescribe to the Central Registration Depository. It also would impose certain new requirements.

Under proposed Exchange Rule 1904(b), each Member would be required to designate registered principal(s) or corporate officer(s) who are responsible for supervising a firm's electronic filings. The registered principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to the rule would be required to acknowledge, electronically, that he or she is filing this information on behalf of the Member and the Member's associated persons. Under proposed Exchange Rule 1904, Interpretation and Policy .01, the registered principal(s) or corporate officer(s) could delegate filing responsibilities to an associated person (who need not be registered) but could not delegate any of the supervision, review, and approval responsibilities mandated in proposed Exchange Rule 1904(b). The registered principal(s) or corporate officer(s) would be required to take reasonable and appropriate action to ensure that all delegated electronic filing functions were properly executed and supervised.

Pursuant to proposed Exchange Rule 1904(c)(1), every initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 must be based on a manually signed Form U4 provided to the Member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the Member's recordkeeping requirements, it would be required to retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with Exchange Act Rule

[77] Proposed Exchange Rule 1903 also differs slightly from FINRA Rule 1240 in that it omits references to certain registration categories which the Exchange does not recognize as well as an internal cross reference to FINRA Rule 4517.

17a–4(e)(1) under the Act and make them available promptly upon regulatory request. An applicant for membership must also retain every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request. Proposed Exchange Rule 1904(c)(2) and Interpretations and Policies .03 and .04 to proposed Exchange Rule 1904, provide for the electronic filing of Form U4 amendments without the individual's manual signature, subject to certain safeguards and procedures.

Proposed Exchange Rule 1904(d) provides that upon filing an electronic Form U4 on behalf of a person applying for registration, a Member must promptly submit fingerprint information for that person and that the Exchange may make a registration effective pending receipt of the fingerprint information. It further provides that if a Member fails to submit the fingerprint information within 30 days after filing of an electronic Form U4, the person's registration will be deemed inactive, requiring the person to immediately cease all activities requiring registration or performing any duties and functioning in any capacity requiring registration. Under this proposed rule, the Exchange must administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated could reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of proposed Exchange Rule 1901. Upon application and a showing of good cause, the Exchange could extend the 30-day period.

Proposed Exchange Rule 1904(e) would require initial filings and amendments of Form U5 to be submitted electronically. As part of the Member's recordkeeping requirements, it would be required to retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with Rule 17a–4 under the Act, and to make such records available promptly upon regulatory request.

Finally, under proposed Exchange Rule 1904, Interpretation and Policy .02, a Member could enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the Member and the Member's associated persons. Notwithstanding the existence of such an agreement, the Member would remain responsible for complying with the requirements of the Rule.

Q. Exchange Rule 100, Definitions

The Exchange proposes to amend Exchange Rule 100, Definitions, to amend the term ''associated person'' or ''person associated with a Member.'' Currently, the term associated person or person associated with a Member means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member.

The Exchange proposes to amend the term associated person or person associated with a Member to insert, at the end of the definition, the phrase ''except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.'' With the proposed change, the definition for associated person or person associated with a Member would be as follows:

> The term ''associated person'' or ''person associated with a Member'' means any partner, officer, director, or branch manager of a Member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a Member, or any employee of a Member, except that any person associated with a Member whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.

Additionally, the Exchange proposes to amend Exchange Rule 100, Definitions to adopt definitions for the following terms: Person, proprietary trading, and proprietary trading firm. The Exchange proposes that the term ''person'' shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

The Exchange proposes that the term ''proprietary trading'' for the purpose of proposed Exchange Rule 1900, means trading done by a Member having the following characteristics: (i) The Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the Member are the trading member's own capital, traded through the Member's own accounts; (iii) the Member does not, and will not, have customers; and (iv) all persons registered on behalf of the Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Member.

The Exchange proposes that the term ''proprietary trading firm'' for the purpose of proposed Exchange Rule 1900, means a Member organization or applicant with the following characteristics: (i) The applicant is not required by Section 15(b)(8) of the Act to become a FINRA Member but is a Member of another registered securities exchange not registered solely under Section 6(g) of the Act; (ii) all funds used or proposed to be used by the applicant for trading are the applicant's own capital, traded through the applicant's own accounts; (iii) the applicant does not, and will not have customers; and (iv) all principals and representatives of the applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the applicant.

As described above, in connection with the Exchange's proposal to adopt Exchange Rule 1901(b)(7), Registered Options Principal, the Exchange proposes to delete the definition for ''Options Principal'' from Exchange Rule 100 in order to provide consistency and clarity within the rule text. In proposed Exchange Rule 1901(b)(7), the Exchange sets forth the requirements and qualifications for a ''Registered Options Principal,'' which incorporates, and adds to, the rule text for the Exchange's current definition for ''Options Principal.'' Accordingly, the Exchange proposes to delete the term ''Options Principal'' and replace all references in the rule text to ''Options Principal'' with the new proposed term ''Registered Options Principal.'' The proposed changes would be to references to ''Options Principal'' that are currently in Exchange Rules 1301, 1306, 1307, 1309, 1310 and 1319. The Exchange also proposes to adopt a definition for a ''Registered Options Principal'' in Exchange Rule 100, that will provide a cross-reference to Exchange Rule 1901(b)(7).

R. Exchange Rule 601, Registered Options Traders

In accordance with the proposed change to delete Exchange Rule 203 in its entirety, revise and relocate the provisions of Exchange Rule 203 to the newly proposed 1900 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 601(b)(2). Currently, Exchange Rule 601(b)(2) has a cross-reference to Exchange Rule

203(a). The Exchange proposes to amend that cross-reference to proposed Exchange Rule 1900.

S. Exchange Rule 1000, Disciplinary Jurisdiction

In accordance with the proposed change to delete several provisions of Exchange Rule 1302, revise and relocate those provisions to the newly proposed 1900 Series, the Exchange proposes to amend a cross-reference in Exchange Rule 1000(c). Currently, Exchange Rule 1000(c) has a cross-reference to Exchange Rule 1302. The Exchange proposes to amend that cross-reference to proposed Exchange Rule 1900, Interpretation and Policy .12.

T. Exchange Rule 1014, Imposition of Fines for Minor Rule Violations

The Exchange proposes to amend the cross-references in Exchange Rule 1014(d)(14) that are to current Exchanges Rules 1301, 1302 and 1303. With the proposed changes described above to delete Exchange Rule 1303 and selection provisions of Exchange Rules 1301 and 1302, the Exchange proposes to amend the cross-references in Exchange 1014(d)(14) that are to Exchange Rules 1301, 1302 and 1303 to the newly proposed Exchange Rule 1904, which incorporates that deleted rule text. Accordingly, the Exchange proposes to amend the cross-reference in Exchange Rule 1014(d)(14) to now be to proposed Exchange Rule 1904.

U. Exchange Rule 1301, Registration of Options Principals

As described above, the Exchange proposes to delete subparagraphs (b), (c), and (d) of Exchange Rule 1301 and relocate those provisions to the proposed 1900 Series of rules. In particular, subparagraphs (b) and (c) are incorporated into proposed Exchange Rule 1900, Interpretation and Policy .12. Subparagraph (d) is incorporated into proposed Exchange Rule 1901(b)(7). Accordingly, the Exchange proposes to renumber Exchange Rule 1301(e) to conform to the hierarchical heading scheme used throughout the Exchange's rulebook to provide consistency and clarity. The Exchange proposes to renumber Exchange Rule 1301(e) to be Exchange Rule 1301(b).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[78] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[79] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[80] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule changes will streamline, and bring consistency and uniformity to, the Exchange's registration rules. The Exchange believes that this will, in turn, assist Members and their associated persons in complying with these rules and improve regulatory efficiency. The proposed rule changes will also improve the efficiency of the examination program, without compromising the qualification standards, by eliminating duplicative testing of general securities knowledge on examinations and by removing examinations that currently have limited utility. In addition, the proposed rule changes will expand the scope of permissive registrations, which, among other things, will allow Members to develop a depth of associated persons with registrations to respond to unanticipated personnel changes and will encourage greater regulatory understanding. Further, the proposed rule changes will provide a more streamlined and effective waiver process for individuals working for a financial services industry affiliate of a Member, and it will require such individuals to maintain specified levels of competence and knowledge while working in areas ancillary to the securities business. The proposed rule changes will improve the supervisory structure of firms by imposing an experience requirement for representatives that are designated by firms to function as principals for a 120-day period before having to pass an appropriate principal qualification examination. The proposed rule change will also prohibit unregistered persons from accepting customer orders under any circumstances, which will enhance investor protection.

The Exchange believes that, with the introduction of the SIE and expansion of the pool of individuals who are eligible to take the SIE, the proposed rule change has the potential of enhancing the pool of prospective securities industry professionals by introducing them to securities laws, rules and regulations and appropriate conduct before they join the industry in a registered capacity.

The extension of the Securities Trader registration requirement to developers of algorithmic trading strategies requires associated persons primarily responsible for the design, development or significant modification of an algorithmic trading strategy or responsible for the day-to-day supervision or direction of such activities to register and meet a minimum standard of knowledge regarding the securities rules and regulations applicable to the Member employing the algorithmic trading strategy. This minimum standard of knowledge is identical to the standard of knowledge currently applicable to traditional securities traders. The Exchange believes that improved education of firm personnel may reduce the potential for problematic market conduct and manipulative trading activity.

The proposed rule changes, including additional definitions and changes to cross-references, make organizational changes to the Exchange's registration and qualification rules, in order to prevent unnecessary regulatory burdens and to promote efficient administration of the rules. The change also makes minor updates and corrections to the Exchange's rules which improve readability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to ensure that all associated persons of Members engaged in a securities business are, and will continue to be, properly trained and qualified to perform their functions, will be supervised, and can be identified by regulators. The proposed new 1900 Series of rules, which are similar in many respects to the registration-related requirements adopted by FINRA effective October 1, 2018, should enhance the ability of member firms to comply with the Exchange's rules as

[78] 15 U.S.C. 78f(b).

[79] 15 U.S.C. 78f(b)(5).

[80] *Id.*

well as with the Federal securities laws. Additionally, as described above, the Exchange intends the amendments described herein to eliminate inconsistent registration-related requirements across the Exchange, thereby promoting uniformity of regulation across markets. The proposed 1900 Series of rules should in fact remove administrative burdens that currently exist for Members seeking to register associated persons on the Exchange featuring varying registration-related requirements. Additionally, all similarly-situated associated persons of Members will be treated similarly under the new 1900 Series of rules in terms of standards of training, experience and competence for persons associated with Exchange Members.

With respect in particular to registration of developers of algorithmic trading strategies, the Exchange recognizes that the proposal would impose costs on member firms employing associated persons engaged in the activity subject to the registration requirement. Specifically, among other things, additional associated persons would be required to become registered under the proposal, and the firm would need to establish policies and procedures to monitor compliance with the proposed requirement on an ongoing basis. However, given the prevalence and importance of algorithmic trading strategies in today's markets, the Exchange believes that associated persons engaged in the activities covered by this proposal must meet a minimum standard of knowledge regarding the applicable securities rules and regulations. To mitigate the costs imposed on member firms, the proposed rule change limits the scope of registration requirement by excluding technological or development support personnel who are not primarily responsible for the covered activities. It also excludes supervisors who are not responsible for the covered activities. It also excludes supervisors who are not responsible for the ''day-to-day'' supervision or direction of the covered activities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–50, and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28089 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87819; File No. SR–ISE–2019–31]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled ''Off-Exchange RWA Transfers'' at ISE Options 6, Section 6

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Off-Exchange RWA Transfers'' at ISE Options 6, Section 6.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[81] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Off-Exchange RWA Transfers'' at ISE Options 6, Section 6. This proposal is substantially the same as Cboe Exchange, Inc. (''Cboe'') Rule 6.8.[3]

Proposed Options 6, Section 6 is intended to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Members[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. ISE currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation[11] member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below);[12] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[13]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Options 6, Section 6(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

[4] 17 CFR 240.15c3–1.

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[6] The term Clearing Member is defined within General 1, Section 1(a)(3). All Clearing Members must also be clearing members of The Options Clearing Corporation (''OCC'').

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[11] The term Clearing Corporation is defined within General 1, Section 1(a)(2).

[12] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[14] A Member may change the give up for a transaction within a specified period of time.[15] Additionally, a Member may also change the Clearing Member [16] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[17] In the above example, if Market Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Options 6, Section 1 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Member Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[18] Additionally, RWA

[14] *See* Options 6B, Section 2.

[15] *See* Options 6, Section 1.

[16] The Clearing Member Trade Assignment (''CMTA'') process at The Options Clearing Corporation (''OCC'') facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[17] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

[18] *See* proposed paragraph (a)(4).

Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[19]

Finally, the Exchange notes it is reserving Sections 5 and 7 of Options 6 for consistency in rule numbering with Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's proposal is substantially the same as Cboe Rule 6.8 [sic]

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the

[19] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2019–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2019–31and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28027 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87832; File No. SR–NYSE–2019–63]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Annual Listing Fees for Equity Securities, Debt Securities, and Listed Structured Products Traded on NYSE Bonds

December 20, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 13, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its listing fees. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain of its listing fees set forth in Chapter 9 of the Manual, in each case with effect from the beginning of the calendar year commencing on January 1, 2020. These amendments only reflect changes in the amounts charged for listed securities and do not reflect any change in the services provided to the issuer in connection with such listing.

Annual Fees for Common Equity Securities

The annual fee set forth in Section 902.03 of the Manual will increase from $0.00110 per share to $0.00113 per share for each of the following: A primary class of common shares (including Equity Investment Tracking

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Stocks); each additional class of common shares (including tracking stock); a primary class of preferred stock (if no class of common shares is listed); each additional class of preferred stock (whether primary class is common or preferred stock); and each class of warrants. In addition, the minimum annual fee will be increased from $68,000 to $71,000 for each of (i) a primary class of common shares (including Equity Investment Tracking Stocks) and (ii) a primary class of preferred stock (if no class of common shares is listed).

The Exchange proposes to make the aforementioned fee increases in Section 902.03 to better reflect the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers. The Exchange's costs of servicing the listing of an equity security include the resources devoted to the required regulatory oversight, the processing of corporate actions, and the maintenance of the client relationship. Many of these costs have increased due to inflation and other factors over the period since the current fee levels were adopted. The revised fees will be applied in the same manner to all issuers with listed securities in the affected categories and the changes will not disproportionately affect any specific category of issuers.

Annual Fees for Securities Subject to Section 902.08

The Exchange proposes to amend its annual fees for structured products listed under Section 703.19 and traded on NYSE Bonds and all debt securities listed under Sections 102.03 and 103.05 (excluding non-listed debt of NYSE issuers and affiliate companies and domestic listed debt of issuers exempt from registration under the Exchange Act) (collectively ''NYSE Bonds Securities'') with effect in the calendar year starting January 1, 2020. Under the current rule, an issuer must pay a separate annual fee for each listed NYSE Bonds Security at a flat rate of $25,000 per listed issuance (except that non-NYSE issuers [4] listing debt securities under Sections 102.03 and 103.05 are charged a $45,000 annual fee). The proposed annual fee schedule for all NYSE Bonds Securities (including debt of non-NYSE issuers) is as follows:

If the issuer has at least one and no more than five listed NYSE Bonds Securities: $25,000

If the issuer has at least six and no more than 10 listed NYSE Bonds Securities: $50,000

If the issuer has at least 11 and no more than 15 listed NYSE Bonds Securities: $75,000

If the issuer has more than 15 listed NYSE Bonds Securities: $100,000

It has been the Exchange's experience that there are both regulatory and customer service efficiencies in dealing with multiple classes of such securities listed by the same issuer. In light of these facts, the Exchange believes that the proposed tiered approach to annual fees under Section 902.08 better reflects the Exchange's resource allocation and costs than is the case with the current fee structure. The revised fee schedule will be applied to all issuers of NYSE Bond Securities in the same manner. The proposed tiering structure will result in issuers that have larger numbers of listed issuances of NYSE Bond Securities paying a lower effective annual fee rate per issuance. The Exchange believes that this fee differential is appropriate in light of the efficiencies described above. While the Exchange recognizes that this will result in a significant reduction in the amount paid per listed security by some issuers, it believes this reduction reasonably reflects the incremental resources devoted to listing additional securities of the same issuer. The tiering approach will also enable the Exchange to respond to a changing and increasingly competitive landscape for the listing of these types of securities.

Initial Listing Fees for Bonds of Non-NYSE Issuers

In addition to adopting the same tiering approach to annual fees for debt of non-NYSE listed companies as for debt of NYSE listed companies, the Exchange also proposes to reduce the initial listing fee for debt of non-NYSE listed companies from $45,000 to $25,000, which is the same rate charged to NYSE listed companies. While the Exchange has previously adopted a separate fee schedule for the listing of bonds of non-NYSE issuers on the grounds that it believed the cost of servicing those listings was meaningfully higher, the Exchange has concluded based on its more recent observation that the regulatory and other resources it expends in servicing the listing of a debt issuance of a non-NYSE listed issuer are not actually meaningfully greater at this time than those expended in relation to the listed debt of an NYSE company. The proposed fee reduction will also enable the Exchange to respond to a changing and increasingly competitive landscape for the listing of these types of securities. For the foregoing reasons, the Exchange believes it is appropriate to charge the same initial and annual listing fees for all NYSE Bond Securities, regardless of whether the issuer's common equity is listed on the Exchange.

Waiver of Initial Listing Fee and Prorated Annual Fee for Transfers

The Exchange proposes to waive initial listing fees and the prorated annual listing fee with respect to the first part year of listing for any NYSE Bonds Security that lists upon transfer from another national securities exchange. The Exchange notes that companies transferring in mid-year will already have paid listing fees for that year to the exchange on which they were previously listed and that the double payment the Exchange's initial listing fee and prorated annual fee imposes on them imposes a significant financial burden and acts as a disincentive to transferring. The Exchange also notes that the proposed waivers are consistent with the approach taken by the NYSE itself and the other national securities exchanges with respect to the waiver of fees in connection with the transfer of common equity securities from another national securities exchange.

The Exchange proposes to make a conforming change to Section 902.02 to reflect the fact that the Exchange will provide the proposed waivers set forth above.

The proposed rule change would not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) [6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[4] *I.e.,* companies that do not have their common equity securities listed on the Exchange.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Change is Reasonable

The Exchange operates in a highly competitive marketplace for the listing of both the various categories of equity securities affected by the proposed fee adjustment and the categories of securities listed and traded on NYSE Bonds. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, in the Exchange's view, the small increase to the annual fees for various categories of equity securities represent a reasonable attempt to address the Exchange's increased costs in servicing these listings while continuing to attract and retain listings. Similarly, the Exchange believes that the proposed tiering of annual fees for securities listed on NYSE Bonds represents a reasonable attempt to attract and retain listings of those categories of securities, while also representing a reasonable approach in light of the efficiencies associated with listing multiple classes of securities of the same issuer. The Exchange believes that the proposal to charge the same fees with respect to bonds of non-NYSE issuers as are charged for bonds of NYSE companies is reasonable because the cost of servicing those securities is comparable to the cost of servicing similar securities of NYSE listed companies. The Exchange believes that the proposal to waive initial listing fees and the first year's prorated annual fees for NYSE Bonds Securities transferring from another national securities exchange is reasonable because the cost of paying listing fees to both the NYSE and the predecessor exchange imposes a significant financial burden and acts as a disincentive to transferring.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants.

The Exchange believes that the proposed amendments to the annual fees for equity securities are equitable because they do not change the existing framework for such fees, but simply increase the minimum fees and per unit rates by a small amount to reflect increased operating costs. Similarly, as the fee structure remains effectively unchanged apart from small increases in the rates paid by all issuers, in the Exchange's view, the changes to annual fees for equity securities neither target nor will they have a disparate impact on any particular category of issuer.

The Exchange believes that the proposed amendments to the annual fees for securities listed and traded on NYSE Bonds (and to the initial and annual fees for bonds of non-NYSE issuers) are equitable because they reflect the similar costs efficiencies experienced by the Exchange in listing multiple securities of similar categories of a single issuer, as well as the similar costs associated with servicing the listing of bonds of non-NYSE issuers to those associated with listed bonds of NYSE listed companies. While issuers with multiple classes of eligible securities will benefit from lower fees, the Exchange believes that there will be no disparate impact on any category of issuers, because the fee paid in connection with the listing of a single class of securities will remain unchanged and no issuer will be required to pay an increased fee rate. The Exchange believes that the waiver of initial listing fees and the prorated annual fee for the first year of listing for securities transferring from another national securities exchange is not inequitable as it expects will be available to a small number of issuers and is being implemented solely to relieve these issuers of the burden of duplicative payments to two exchanges.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

The proposed fee changes are not unfairly discriminatory because the same fee schedule will apply to all listed issuers. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other venues currently list all of the categories of securities covered by the proposed fees and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its securities or to list them on an alternative venue. As discussed above under ''Purpose,'' the Exchange believes that the proposed tiered approach to annual fees under Section 902.08 better reflects the Exchange's resource allocation and costs than is the case with the current fee structure.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed amended fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–63 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28077 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87826; File No. SR–MRX–2019–24]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled "Off-Exchange RWA Transfers" at MRX Options 6, Section 6

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Off-Exchange RWA Transfers'' at MRX Options 6, Section.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Off-Exchange RWA Transfers'' at MRX Options 6, Section 6. This proposal is substantially the same as Cboe Exchange, Inc. (''Cboe'') Rule 6.8.[3]

Proposed Options 6, Section 6 is intended to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

[4] 17 CFR 240.15c3–1.

certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Members[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. MRX currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation[11] member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below);[12] and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[13]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Options 6, Section 6(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the transaction will clear.[14] A Member may change the give up for a transaction within a specified period of time.[15] Additionally, a Member may also change the Clearing Member[16] for a

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[6] The term Clearing Member is defined within General 1, Section 1(a)(4). All Clearing Members must also be clearing members of The Options Clearing Corporation (''OCC'').

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[11] The term Clearing Corporation is defined within General 1, Section 1(a)(3).

[12] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

[14] *See* Options 6B, Section 2.

[15] *See* Options 6, Section 1.

[16] The Clearing Member Trade Assignment (''CMTA'') process at The Options Clearing Corporation (''OCC'') facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion.

Continued

specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[17] In the above example, if Market Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Options 6, Section 1 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions described above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Member Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[18] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[19]

Finally, the Exchange notes it is reserving Sections 5 and 7 of Options 6 for consistency in rule numbering with Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange's proposal is substantially the same as Cboe Rule 6.8 [sic].

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an

Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[17] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

[18] *See* proposed paragraph (a)(4).

[19] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2019–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2019–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2019–24 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28076 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87845; File No. SR–MRX–2019–25]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Mass Cancellation Rule and Amend Other Sections of the Rulebook

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2019, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Exchange also proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer'' within Options 1, Section 1, and update rule citations in various other rules.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Exchange also proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer within Options 1, Section 1, and update rule citations in various other rules.

Mass Cancellation of Trading Interest

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') rules at Chapter VII, Section 11 permit Participants on those markets to contact market operations and manually request cancellation of interest. The Exchange proposes to adopt a rule which also permits Members to contact market operations and request the Exchange to manually cancel interest. The proposed new rule would state, ''A Member may cancel any bids, offers, and orders in any series of options by requesting MRX Market Operations[3] staff to effect such cancellation as per the instructions of the Member.'' This new rule reflects the Exchange's current practice of allowing Members to contact MRX Market Operations and request the Exchange to cancel any bid, offer or order in any series of options. The Exchange would cancel such bid, offer or order pursuant to the Member's instruction. The Exchange desires to memorialize the availability of this service.

Definitions

The Exchange proposes to make a technical amendment to General 1, Section 1(a)(6) to note the acronym for an Electronic Access Member, an ''EAM'' within the definition. The acronym is utilized throughout the Rulebook. Defining the acronym within the definition will add transparency to the Rulebook.

The Exchange proposes to add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4). This term is utilized throughout the Rulebook. Defining this term will bring greater transparency to the Rulebook.

[3] The request to Market Operations is a manual request which is made telephonically.

Other Changes

The Exchange proposes to reserve certain rules [4] in connection with a Rulebook harmonization project which organizes the rules of the Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 is consistent with the Act because permitting Members to contact Market Operations as a manual alternative to automated functionality which similarly allows Members to cancel interest provides Members experiencing their own system issues with a means to manage risk. Today, Members are able to cancel interest, in an automated fashion through protocols [7] and the Kill Switch.[8] This is a voluntary services offered to all Members.

The Exchange notes that offering this service, which permits Members to cancel interest, will not diminish a Market Maker's obligation with respect to providing two-sided quotations and this rule is not inconsistent with other firm quote obligations of the Market Maker. Upon the request of a Member, MRX Market Operations will manually input a mass cancellation message into the System consistent with the Member's instruction to cancel trading interest. Once the mass cancellation message is entered into the System by MRX Market Operations, the message will be accepted by the System in the order of receipt in the queue such that the interest that was already accepted into the System will be processed prior to the mass cancellation message. In addition, mass cancellation messages entered into the System by MRX Market Operations are handled by the System through the same queuing mechanism that a quote or order message is handled by the System. The Exchange notes its processing of a mass cancellation message inputted by MRX Market Operations and handled by the System is consistent with firm quote and order handling rules.

The Exchange notes that offering this service which permits Members to cancel interest will not diminish a Member's obligation with respect to providing two-sided quotations and this rule is not inconsistent with other firm quote obligations of the Member. The Kill Switch message will be accepted by the System in the order of receipt in the queue and will be processed in that order so that interest that is already accepted into the System will be processed prior to the Kill Switch message. Messages sent to the System by the Kill Switch are processed in the order they are received by the matching engine, through the same queuing mechanism that a quote or order message is processed. MRX Market Operations would process the cancellation request when received.

As noted above, NOM and BX Rules at Chapter VII, Section 11 allow NOM and BX Participants to also contact market operations and request cancellations of interest. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1 and add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4) are consistent with the Act because these amendments will add transparency to the Rulebook.

Other Changes

The Exchange's proposal to update the reference within Options 3, Section 16(b) to refer to Options 3, Section 12 not just 12(a), and add cross-references to the Solicited Order Mechanism and Price Improvement Mechanism within Options 3, Section 16, are consistent with the Act and add greater clarity to the Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 does not impose an undue burden on competition because all Members may utilize this service. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1 and add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4) do not impose an undue burden on competition because these amendments will add transparency to the Rulebook.

Other Changes

The Exchange's proposal to update the reference within Options 3, Section 16(b) to refer to Options 3, Section 12 not just 12(a), and add cross-references to the Solicited Order Mechanism and Price Improvement Mechanism within Options 3, Section 16 do not impose an undue burden on competition. The remainder of the changes to correct numbering and citations are non-substantive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the

[4] Options 2, Section 3 and Options 3, Section 28 are being reserved.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Options 3 at Supplementary Material .03 to Section 7.

[8] *See* Options 3, Section 17.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that NOM and BX currently have rules that permit NOM and BX Participants to cancel interest,[13] and that the Exchange proposes the additional changes to provide greater clarity in its rules. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2019–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2019–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2019–25 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28173 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* NOM and BX Rules at Chapter VII, Section 11.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87820; File No. SR–NASDAQ–2019–097]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled "Off-Exchange RWA Transfers" at Options 6, Section 6

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled "Off-Exchange RWA Transfers" at The Nasdaq Options Market LLC ("NOM") Rules at Options 6, Section 6. The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, "Off-Exchange RWA Transfers" at NOM Options 6, Section 6. This proposal is substantially the same as Cboe Exchange, Inc. ("Cboe") Rule 6.8.[3]

Proposed Options 6, Section 6 is intended to facilitate the reduction of risk-weighted assets ("RWA") attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) ("Net Capital Rules") requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

[4] 17 CFR 240.15c3–1.

financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Participants[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Participants are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Participants that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Participants that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. NOM currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Participant or non-Participant (including an affiliate of a Participant) may be transferred on, from, or to the books of a Clearing Participant off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation[11] member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below)[12]; and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[13]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Options 6, Section 6(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Participant X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Participant Y, which is not affiliated with a U.S.-bank holding company. Clearing Participant X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Participant X clearing account and determines it must reduce its open positions to satisfy Clearing Participant X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Participant X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Participant Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Participant must give up a Clearing Participant for each transaction it effects on the Exchange, which identifies the Clearing Participant through which the transaction will clear.[14] A Participant may change the give up for a transaction

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[6] The term Clearing Participant is defined within Chapter I, Section 1(a)(9). All Clearing Participants must also be clearing members of The Options Clearing Corporation (''OCC'').

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[11] The term Clearing Corporation is defined within Chapter I, Section 1(a)(8).

[12] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

[14] *See* Options 5, Section 102.

within a specified period of time.[15] Additionally, a Participant may also change the Clearing Participant[16] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[17] In the above example, if Market Maker A had initially given up Clearing Participant Y rather than Clearing Participant X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Participant Y pursuant to Options 6, Section 1 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Participant restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different exchanges, but only if the Market Maker nominees are trading for the same Participant, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Participant X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Participant Y to its account with Clearing Participant X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Participant Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[18] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[19]

Finally, the Exchange notes it is reserving Sections 5 and 7 of Options 6 for consistency in rule numbering with Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[15] *See* Chapter VI, Section 14.

[16] The Clearing Member Trade Assignment (''CMTA'') process at The Options Clearing Corporation (''OCC'') facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[17] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

[18] *See* proposed paragraph (a)(4).

[19] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Participants and Clearing Participants under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4. a [sic]

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

The Exchange's proposal is substantially the same as Cboe Rule 6.8 [sic]

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Participants and non-Participants with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Participants and non-Participants with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–097. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–097 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28028 Filed 12–27–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Advisers Act Release No. 5420; File No. 803–00248]

Inter-American Development Bank; Notice of Application

December 20, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

SUMMARY: Notice of application for an exemption under section 202(a)(11)(H) of the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: Inter-American Development Bank (''IDB'' or ''Applicant'').

Relevant Advisers Act Sections: Exemption requested under section 202(a)(11)(H) of the Advisers Act from section 202(a)(11) of the Advisers Act.

Summary of Application: The Applicant requests that the Commission issue an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act, which defines the term ''investment adviser.''

Filing Dates: The application was filed on June 7, 2019, and amended on October 1, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 14, 2019, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicant, Inter-American Development Bank, 1300 New York Avenue NW Washington, DC 20577.

FOR FURTHER INFORMATION CONTACT: Benjamin Kalish, Senior Counsel, or Parisa Haghshenas, Branch Chief, at 202–551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website either at *http://www.sec.gov/rules/iareleases.shtml* or by calling (202) 551–8090.

Applicant's Representations

1. The IDB was established by international treaty with the principal purpose to contribute to the acceleration of the process of economic and social development in Latin America and the Caribbean. The IDB's principal activities are providing loans and credit guarantees, and technical assistance to support development projects in its developing member countries. The IDB has operated since 1959 under an agreement signed by the governments of its member countries, including the U.S., and its member countries own all of its capital stock.

2. The Applicant provides substantial technical assistance to the governments of its member countries as part of or in parallel to a loan or guarantee, or independently. The purpose of IDB's technical assistance activities is both to improve the operations of the member government as they relate to economic and social development and to contribute to knowledge transfer and capacity building of developing member countries. Technical assistance includes assisting member countries to improve their asset and liability management techniques and advice for member countries on adopting sound portfolio management techniques.

3. The Applicant seeks to expand its services to meet requests from member countries to help them strengthen the management of their reserves and to bring their treasury operations in line with current capital and financial markets best practices. The Applicant would provide these treasury-related services only to IDB member countries, their central banks, other governmental institutions of such member countries, and other international organizations owned entirely by their sovereign nation members, substantially all of which members are also members of the IDB (collectively ''Potential Clients''). The Applicant would provide its services

[25] 17 CFR 200.30–3(a)(12).

only with respect to government and/or public assets.

4. Member countries have requested that the Applicant provide them with asset management and related services (back office, risk, accounting, advisory and other support services) to help them develop additional internal capacities. The Applicant would exercise discretionary authority with respect to the assets, acting as the agent for Potential Clients.

5. Member countries have also requested advice and instruction relating to hedging activities and to capital markets borrowings. The Applicant proposes to provide detailed advice on debt management, hedging techniques for specific transactions, and capital markets borrowings. The Applicant also proposes to provide targeted training seminars and courses at the IDB's offices, at Potential Clients' locations, or online.

6. The Applicant expects to charge a fee for the activities/services it provides that would allow it to recover the associated costs.

Applicants' Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines ''investment adviser'' to mean ''any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities . . . .''

2. The Applicant proposes to offer asset management and advisory services on a regular, recurring basis and to charge recipients a fee for these services. Accordingly, the Applicant would be ''in the business of'' providing investment advice for compensation and would be an ''investment adviser'' for purposes of the Advisers Act.

3. Section 202(a)(11)(H) of the Advisers Act authorizes the Commission to exclude from the definition of ''investment adviser'' persons that are not within the intent of section 202(a)(11). The Applicant requests that the Commission issue an order under section 202(a)(11)(H) declaring it to be a person not within the intent of section 202(a)(11).

4. The Applicant argues that the Advisers Act contemplates the regulation of private sector entities and was not intended to regulate an entity that is an organization of sovereign nations providing investment advice to Potential Clients. The Applicant states that section 202(b) of the Advisers Act provides that the Advisers Act is not applicable to the ''United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.'' While the Applicant acknowledges that the Advisers Act does not expressly exempt international organizations made up solely of sovereign nations, the Applicant argues that the Advisers Act seems clearly intended not to apply to such organizations.

5. The Applicant acknowledges that a foreign individual or corporation would reasonably expect the protections of the U.S. securities laws to apply when doing business with an investment adviser resident in the United States. The Applicant asserts, however, that, given the particular nature of the IDB, its unique purposes, and the nature of its constituent members, recipients of the proposed investment advice would not reasonably expect the Advisers Act to apply to those services.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28050 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87829; File No. SR–PEARL–2019–35]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 100, Definitions, Exchange Rule 503, Openings on the Exchange, Exchange Rule 515, Execution of Orders, Exchange Rule 516, Order Types, and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 100, Definitions; Exchange Rule 503, Openings on the Exchange; Exchange Rule 515, Execution of Orders; Exchange Rule 516, Order Types; and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 100, Definitions; Exchange Rule 503, Openings on the Exchange; Exchange Rule 515, Execution of Orders; Exchange Rule 516, Order Types; and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, to make non-substantive edits to update internal cross references in the Exchange's rulebook.

The Exchange is an affiliate of the Miami International Securities Exchange, LLC (''MIAX'') and incorporates by reference a number of MIAX Exchange rules into its rulebook. MIAX Exchange recently amended Rule 1400, Definitions, found in Chapter XIV of the MIAX Exchange rules, which are

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

its rules pertaining to the Options Order Protection and Locked and Crossed Market Plan.[3] The MIAX Exchange adopted a definition for Complex Trade which, when inserted into its proper alphabetical position in MIAX Exchange Rule 1400, caused the subsequent following definitions to be renumbered (*e.g.,* the existing subparagraph (d) became new subparagraph (e); existing subparagraph (e) became new subparagraph (f), etc . . .). As a result of the change to the MIAX Exchange Rule 1400, a number of internal cross references contained in the Exchange's rulebook must be updated.

Specifically, the internal cross-reference to Eligible Exchanges in the definition of ABBO or Away Best Bid or Offer, in Exchange Rule 100, must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to Eligible Exchanges in Exchange Rule 503(a)(5) must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to the NBBO in Exchange Rule 515(a) must be updated from Rule 1400(j) to Rule 1400(k). The internal cross-reference to Intermarket Sweep Orders in Exchange Rule 516(f) must be updated from Rule 1400(h) to Rule 1400(i). Similarly in Rule 516(f) the internal cross-references to Protected Quotations and Eligible Exchanges must be updated from 1400(p) and (f) to 1400(q) and (g) respectively. Lastly, in Rule 516(f), the internal cross-reference to Protected Bid or Protected Offer must be updated from 1400(o) to 1400 (p). Finally, the internal cross-reference to the Options Order Protection and Locked/Crossed Market Plan in Exchange Rule 521(j) must be updated from Rule 1400(n) to Rule 1400(o).

The Exchange believes that these non-substantive changes will add clarity and precision to the Exchange's rules.

2. Statutory Basis

MIAX PEARL believes that its proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed non-substantive rule changes to update internal cross-references within the Exchange's Rules promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional clarity and precision in the Exchange's rules. The Exchange believes it is in the public interest for rules to be accurate and precise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the proposed change is non-substantive in nature. The non-substantive edits to update internal cross-references in the Exchange's rulebook provides precision and accuracy in the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the non-substantive edits to update internal cross-references in the Exchange's rulebook provide additional detail and clarity in the Exchange's rules, which apply equally to all Exchange Members.[6]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[7] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[8] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately harmonize its rules to MIAX Options to ensure that the internal cross-references in the Exchange's rulebook are correct. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[3] *See* Securities Exchange Act Release No. 87693 (December 9, 2019), 84 FR 68264 (December 13, 2019) (SR–MIAX–2019–48).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the MIAX PEARL Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–35 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–35 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28085 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87844; File No. SR–GEMX–2019–18]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Mass Cancellation Rule and Amend Other Sections of the Rulebook

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2019, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer'' within Options 1, Section 1, and update rule citations in various other rules.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Exchange also proposes to amend definitions within General 1, Section 1, adopt a new definition for ''Away Best Bid or Offer within Options 1, Section 1, and update rule citations in various other rules.

Mass Cancellation of Trading Interest

The Exchange proposes to adopt a new rule at Options 3, Section 19 titled ''Mass Cancellation of Trading Interest.'' The Nasdaq Options Market LLC (''NOM'') and Nasdaq BX, Inc. (''BX'') rules at Chapter VII, Section 11 permit Participants on those markets to contact market operations and manually request cancellation of interest. The Exchange proposes to adopt a rule which also permits Members to contact market operations and request the Exchange to manually cancel interest. The proposed new rule would state, ''A Member may cancel any bids, offers, and orders in any series of options by requesting GEMX Market Operations [3] staff to effect such cancellation as per the instructions of the Member.'' This new rule reflects the Exchange's current practice of allowing Members to contact GEMX Market Operations and request the Exchange to cancel any bid, offer or order in any series of options. The Exchange would cancel such bid, offer or order pursuant to the Member's instruction. The Exchange desires to memorialize the availability of this service.

Definitions

The Exchange proposes to make a technical amendment to General 1, Section 1(a)(6) to note the acronym for an Electronic Access Member, an ''EAM'' within the definition. The acronym is utilized throughout the Rulebook. Defining the acronym within the definition will add transparency to the Rulebook.

The Exchange proposes to add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4). This term is utilized throughout the Rulebook. Defining this term will bring greater transparency to the Rulebook. The Exchange also proposes to update the numbering in the remainder of the rule and also update

[3] The request to Market Operations is a manual request which is made telephonically.

cross-references throughout the Rulebook[4] as a result of the renumbering.

Other Changes

The Exchange proposes to reserve certain rules[5] in connection with a Rulebook harmonization project which organizes the rules of the Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 is consistent with the Act because permitting Members to contact Market Operations as a manual alternative to automated functionality which similarly allows Members to cancel interest provides Members experiencing their own system issues with a means to manage risk. Today, Members are able to cancel interest, in an automated fashion through protocols[8] and the Kill Switch.[9] This is a voluntary services offered to all Members.

The Exchange notes that offering this service, which permits Members to cancel interest, will not diminish a Market Maker's obligation with respect to providing two-sided quotations and this rule is not inconsistent with other firm quote obligations of the Market Maker. Upon the request of a Member, GEMX Market Operations will manually input a mass cancellation message into the System consistent with the Member's instruction to cancel trading interest. Once the mass cancellation message is entered into the System by GEMX Market Operations, the message will be accepted by the System in the order of receipt in the queue such that the interest that was already accepted into the System will be processed prior to the mass cancellation message. In addition, mass cancellation messages entered into the System by GEMX Market Operations are handled by the System through the same queuing mechanism that a quote or order message is handled by the System. The Exchange notes its processing of a mass cancellation message inputted by GEMX Market Operations and handled by the System is consistent with firm quote and order handling rules.

As noted above, NOM and BX Rules at Chapter VII, Section 11 allow NOM and BX Participants to also contact market operations and request cancellations of interest. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1 and add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4) are consistent with the Act because these amendments will add transparency to the Rulebook.

Other Changes

The remainder of the changes to correct numbering and citations are non-substantive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Mass Cancellation of Trading Interest

The Exchange's proposal to memorialize the Mass Cancellation of Trading Interest rule within Options 3, Section 19 does not impose an undue burden on competition because all Members may utilize this service. This new rule reflects the Exchange's current practice.

Definitions

The Exchange's proposal to add the acronym for an Electronic Access Member, an ''EAM'' within General 1, Section 1 and add the definition of an ''Away Best Bid or Offer'' or ''ABBO'' within Options 1, Section 1(a)(4) do not impose an undue burden on competition because these amendments will add transparency to the Rulebook.

Other Changes

The remainder of the changes to correct numbering and citations are non-substantive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that NOM and BX currently have rules that permit NOM and BX Participants to cancel interest,[14] and that the Exchange proposes the additional changes to provide greater clarity in its rules. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[4] *See* Options 3, Section 10 and Options 7, Section 1.

[5] Options 2, Section 3 and Options 3, Section 28 are being reserved.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Options 3 at Supplementary Material .03 to Section 7.

[9] *See* Options 3, Section 17.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* NOM and BX Rules at Chapter VII, Section 11.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2019–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2019–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2019–18 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28172 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87821; File No. SR–NYSE–2019–67]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Chapter One of the Listed Company Manual To Modify the Provisions Relating to Direct Listings

December 20, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 11, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change. On December 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter One of the Listed Company Manual (the ''Manual'') to modify the provisions relating to direct listings.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 102.01B of the Manual includes initial listing requirements for a company that has not previously had its common equity securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement filed solely for the purpose of allowing existing shareholders to sell their shares (a ''Selling Shareholder Direct Floor Listing'').[5] To allow a company to sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering, the Exchange proposes to amend Section 102.01B. The proposed change would allow a company that has not previously had its common equity securities registered under the Act, to list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company will sell shares in the opening auction on the first day of trading on the Exchange (a ''Primary Direct Floor Listing''). The proposal would permit a company to conduct a Primary Direct Floor Listing in addition to, or instead of, a Selling Shareholder Direct Floor Listing.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange has previously filed a proposed rule change to amend Chapter One of the Manual to modify the provisions related to direct listings. *See* SR–NYSE–2019–67. The Exchange is now filing this Amendment No. 1 to SR–NYSE–2019–67 to make clear in Exhibit 5 to this filing that a company conducting a Primary Direct Floor Listing in which the company sells shares in the opening auction with a market value of less than $100 million will be eligible to list if the aggregate of the market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the company in the opening auction totals at least $250 million. This Amendment No.1 to SR–NYSE–2019–67 replaces SR–NYSE–2019–67 as originally filed and supersedes such filing in its entirety.

[5] Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR–NYSE–2017–30).

In considering the initial listing of a company in connection with a Selling Shareholder Direct Floor Listing, Section 102.01B currently provides that the Exchange will determine that such company has met the applicable $100 million aggregate market value of publicly-held shares requirement based on a combination of both (i) an independent third-party valuation of the company (a ''Valuation'') and (ii) the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a ''Private Placement Market''). The Exchange will attribute a market value of publicly-held shares to the company equal to the lesser of (i) the value calculable based on the Valuation and (ii) the value calculable based on the most recent trading price in a Private Placement Market. Alternatively, in the absence of any recent trading in a Private Placement Market, Section 102.01B provides that the Exchange will determine that such company has met its market value of publicly-held shares requirement if the company provides a Valuation evidencing a market value of publicly-held shares of at least $250 million. With respect to this requirement, the Exchange is proposing the following:

- The Exchange proposes that a company would qualify for listing in connection with a Primary Direct Floor Listing by selling at least $100 million in market value of shares in the opening auction.
- The Exchange proposes that a company would qualify for listing in connection with a Primary Direct Floor Listing if the aggregate of the market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the company in the opening auction totals at least $250 million.

The Exchange also proposes to modify the distribution requirements for listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing. Pursuant to Section 102.1A of the Manual, any company listing in connection with either a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing is required to have at least 400 round lot holders and 1.1 million publicly-held shares at the time of listing. Private companies generally do not have as many as 400 round lot shareholders, but this is typically not a barrier to listing for a company undertaking an initial public offering as the underwriters are able to ensure that the shares sold in the IPO are distributed to sufficient accounts to meet the Exchange's distribution standards. However, in the absence of an underwritten transaction at the time of listing, the initial listing distribution standards may represent more of a challenge for a private company contemplating listing in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing.

The Exchange believes that a Primary Direct Floor Listing in which the company sells at least $250 million of its stock in the opening auction on the day of listing would provide an appropriately liquid trading market and make highly likely that the company would meet the initial listing distribution standards quickly after initial listing. Consequently, the Exchange proposes to amend Section 102.01A to provide that any company listing in connection with a Primary Direct Floor Listing in which the company sells at least $250 million in market value of shares in the opening auction on the initial listing date may list and commence trading on the basis that the company would have to demonstrate compliance with the distribution requirements within 90 trading days of the listing date (the ''Distribution Standard Compliance Period''). Any company that fails to meet the distribution standards by the end of the Distribution Standard Compliance Period would be deemed to be below compliance. In that case, the company would have the opportunity to submit a compliance plan as set forth in the applicable procedures in Sections 802.02 and 802.03 of the Manual, but will not be granted a plan period that extends more than six months from the end of the Distribution Standard Compliance Period. If a company does not meet the initial listing distribution standards by the end of the maximum six month compliance period, it would be subject to immediate suspension and delisting.

In addition, the Exchange proposes to provide the benefit of the same Distribution Standard Compliance Period in the case of: (i) A company listing in connection with a Selling Shareholder Direct Floor Listing that demonstrates $350 million in market value of publicly-held shares; and (ii) a Primary Direct Floor Listing in which the company sells less than $250 million of its stock in the opening auction but has a market value of publicly-held shares immediately prior to listing together with the market value of shares sold by the company in the opening auction totaling at least $350 million.

Currently, a company listing in connection with a Selling Shareholder Direct Floor Listing is required to demonstrate at the time of initial listing that it has at least 400 round lot holders and (i) at least $100 million in market value of publicly-held shares based on the lower of a Valuation or the most recent trading price in a Private Placement Market or (ii) at least $250 million in market value of publicly-held shares. The Exchange proposes that a company with $350 million in market value of publicly-held shares (including in the case of a company listing in connection with a Primary Direct Floor Listing where the aggregate of the shares sold by the company in the opening auction and the market value of the publicly-held shares outstanding immediately before the listing is at least $350 million) may list and commence trading on the basis that the company would have to demonstrate compliance with the distribution requirements within 90 trading days of the listing date. The Exchange notes that the market value of publicly-held shares requirement for listings other than direct floor listings and IPOs is $100 million, so the $350 million public float that would be required under this proposal to use the Distribution Compliance Period is far higher than what a newly-listed company would have to demonstrate under other circumstances. The Exchange believes that this heightened standard significantly increases the likelihood that a liquid trading market will develop after a Selling Shareholder Direct Floor Listing or Primary Direct Floor Listing and therefore makes it likely that these companies will meet the initial distribution standards within the Distribution Standard Compliance Period.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[7] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors. The proposal would require that a company in a Primary Direct Floor Listing must either sell at least $100 million of its listed securities in the opening auction or demonstrate that the sum of its market value of publicly-held shares immediately prior to listing and the market value of shares sold by the company in the opening auction is at least $250 million. These requirements would provide that any company conducting a Primary Direct Floor Listing would be of a suitable size for Exchange listing and that there would be sufficient liquidity for the security to be suitable for auction market trading.

The proposal to provide a limited grace period for companies to meet the initial distribution requirements in connection with a Selling Shareholder Direct Floor Listing or a Primary Direct Floor Listing is consistent with the protection of investors because the enhanced public float requirements of $350 million for Selling Shareholder Direct Floor Listings and Primary Direct Floor Listings in which the company sells less than $250 million in market value of shares in the opening auction and the $250 million minimum opening trade requirement for all other Primary Direct Floor Listings would make it probable that there would be a quick development of a liquid trading market and that the company would comply with the initial listing distribution standards within the Distribution Standard Compliance Period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition by providing new pathways for companies to access the public markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–67, and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28029 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87838; File No. SR–NYSENAT–2019–32]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection With the Exchange's Co-Location Services

December 23, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 16, 2019, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services to extend a fee discount for the Partial Cabinet Solution (''PCS'') bundles that the Exchange offers Users.[5]

There are four PCS bundles, each of which includes a partial cabinet; access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[7]

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (''MRC'') for the first 24 months.[8] The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.[9] The Exchange does not propose to amend the length of the discount period.

The amended portion of the Price List would read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles. *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2020: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2020: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020: $15,000 monthly.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07) (''Co-location Notice''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 10. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (collectively, the ''Affiliate SROs''). *See id.* at note 12.

[6] *See id.* at 26317.

[7] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[8] *See* Securities Exchange Act Release No. 84895 (December 20, 2018), 83 FR 67405 (December 28, 2019) (SR–NYSENAT–2018–26).

[9] Affiliate SROs previously extended the MRC reduction for one year. *See* Securities Exchange Act Release Nos. 82223 (December 6, 2017) 82 FR 58459 (December 12, 2017) (SR–NYSE–2017–62); and 79715 (December 30, 2016), 82 FR 1777 (January. 6, 2017) (SR–NYSE–2016–91).

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Price List is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN and IP network connections—and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.[11]

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[12]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS bundles. Extending the existing

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Co-location Notice, *supra* note 4, at 26318.

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[15] *See* Co-location Notice, *supra* note 4, at 26315. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–72, SR–NYSEAmer–2019–58, SR–NYSEArca–2019–97, and SR–NYSECHX–2019–27.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

The Proposed Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[19]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20]

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations.

Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and

[19] *See supra* note 7.

[20] 15 U.S.C. 78f(b)(8).

related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2019–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–32 andshould be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28166 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87839; File No. SR–NYSEARCA–2019–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges To Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection With the Exchange's Co-location Services

December 23, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 16, 2019, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location [4] services to extend a fee discount for the Partial Cabinet Solution (''PCS'') bundles that the Exchange offers Users.[5]

There are four PCS bundles, each of which includes a partial cabinet; access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[7]

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (''MRC'') for the first 24 months.[8] The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.[9] The Exchange does not propose to amend the length of the discount period.

The amended portions of the Fee Schedules would read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2020: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2020: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020: $15,000 monthly.

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Fee Schedules are applied uniformly to all Users.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (collectively, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca–2015–102).

[7] *Id.,* at 7402.

[8] *See* Securities Exchange Act Release No. 84898 (December 20, 2018), 83 FR 67397 (December 28, 2019) (SR–NYSEArca–2018–93).

[9] The Exchange previously extended the MRC reduction for one year. *See* Securities Exchange Act Release Nos. 82226 (December 6, 2017), 82 FR 58462 (December 12, 2017) (SR–NYSEArca–2017–134); and 79716 (December 30, 2016), 82 FR 1774 (January 6, 2017) (SR–NYSEArca–2016–168).

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN and IP network connections—and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.[11]

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[12]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS bundles. Extending the existing eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[15] *See* 78 FR 50459, *supra* note 5, at 50459. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–72, SR–NYSEAmer–2019–58, SR–NYSECHX–2019–27, and SR–NYSENAT–2019–32.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

The Proposed Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[19]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20]

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its

[19] *See supra* note 7.

[20] 15 U.S.C. 78f(b)(8).

broader forms that are most important to investors and listed companies.'' [21]

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4[23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2019–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–97 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28168 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87818; File No. SR–GEMX–2019–17]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule Titled ''Off-Exchange RWA Transfers'' at GEMX Options 6, Section 6

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2019, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule titled ''Off-Exchange RWA Transfers'' at GEMX Options 6, Section 6.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new rule titled, ''Off-Exchange RWA Transfers'' at GEMX Options 6, Section 6. This proposal is substantially the same as Cboe Exchange, Inc. (''Cboe'') Rule 6.8.[3]

Proposed Options 6, Section 6 is intended to facilitate the reduction of risk-weighted assets (''RWA'') attributable to open options positions. SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87374 (October 21, 2019), 84 FR 57542 (October 25, 2019) (SR–Cboe–2019–044).

excepted, to maintain certain specified minimum levels of capital.[4] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[5]

Subject to certain exceptions, Clearing Members[6] are subject to the Net Capital Rules.[7] However, a subset of Clearing Members are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S.-bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules, among other things, impose higher minimum capital and higher asset risk weights than were previously mandated for Clearing Members that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not fully permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, Clearing Members that are subsidiaries of U.S. bank holding companies must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules.

The Exchange is concerned with the ability of Market Makers to provide liquidity in their appointed classes. The Exchange believes that permitting market participants to efficiently transfer existing options positions through an off-exchange transfer process would likely have a beneficial effect on continued liquidity in the options market without adversely affecting market quality. Liquidity in the listed options market is critically important. The Exchange believes that the proposed rule change provides market participants with an efficient mechanism to transfer their open options positions from one clearing account to another clearing account and thereby increase liquidity in the listed options market. GEMX currently has no mechanism that firms may use to transfer positions between clearing accounts without having to effect a transaction with another party and close a position.

The proposed rule provides that existing positions in options listed on the Exchange of a Member or non-Member (including an affiliate of a Member) may be transferred on, from, or to the books of a Clearing Member off the Exchange if the transfer establishes a net reduction of RWA attributable to those options positions (an ''RWA Transfer''). Proposed paragraph (a)(1) adds examples of two transfers that would be deemed to establish a net reduction of RWA, and thus qualify as a permissible RWA Transfer:

- A transfer of options positions from Clearing Corporation[11] member A to Clearing Corporation member B that net (offset) with positions held at Clearing Corporation member B, and thus closes all or part of those positions (as demonstrated in the example below)[12]; and
- A transfer of options positions from a bank-affiliated Clearing Corporation member to a non-bank-affiliated Clearing Corporation member.[13]

These transfers will not result in a change in ownership, as they must occur between accounts of the same Person.

''Person'' is defined within proposed Options 6, Section 6(a) as an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.

In other words, RWA transfers may only occur between the same individual or legal entity. These are merely transfers from one clearing account to another, both of which are attributable to the same individual or legal entity. A market participant effecting an RWA Transfer is analogous to an individual transferring funds from a checking account to a savings account, or from an account at one bank to an account at another bank—the money still belongs to the same person, who is just holding it in a different account for personal financial reasons.

For example, Market Maker A clears transactions on the Exchange into an account it has with Clearing Member X, which is affiliated with a U.S-bank holding company. Market Maker A opens a clearing account with Clearing Member Y, which is not affiliated with a U.S.-bank holding company. Clearing Member X has informed Market Maker A that its open positions may not exceed a certain amount at the end of a calendar month, or it will be subject to restrictions on new positions it may open the following month. On August 28, Market Maker A reviews the open positions in its Clearing Member X clearing account and determines it must reduce its open positions to satisfy Clearing Member X's requirements by the end of August. It determines that transferring out 1000 short calls in class ABC will sufficiently reduce the RWA capital requirements in the account with Clearing Member X to avoid additional position limits in September. Market Maker A wants to retain the positions in accordance with its risk profile. Pursuant to the proposed rule change, on August 31, Market Maker A transfers 1000 short calls in class ABC to its clearing account with Clearing Member Y. As a result, Market Maker A can continue to provide the same level of liquidity in class ABC during September as it did in previous months.

A Member must give up a Clearing Member for each transaction it effects on the Exchange, which identifies the Clearing Member through which the

[4] 17 CFR 240.15c3–1.

[5] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.* vertical spreads).

[6] The term Clearing Member is defined within General 1, Section 1(a)(4). All Clearing Members must also be clearing members of The Options Clearing Corporation (''OCC'').

[7] In the event federal regulators modify bank capital requirements in the future, the Exchange will reevaluate the proposed rule change at that time to determine whether any corresponding changes to the proposed rule are appropriate.

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by broker-dealers, are risk limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined.

[11] The term Clearing Corporation is defined within General 1, Section 1(a)(3).

[12] This transfer would establish a net reduction of RWA attributable to the transferring Person, because there would be fewer open positions and thus fewer assets subject to Net Capital Rules.

[13] This transfer would establish a net reduction of RWA attributable to the transferring Person, because the non-bank-affiliated Clearing Corporation member would not be subject to Net Capital Rules, as described above.

transaction will clear.[14] A Member may change the give up for a transaction within a specified period of time.[15] Additionally, a Member may also change the Clearing Member [16] for a specific transaction. The transfer of positions from an account with one clearing firm to the account of another clearing firm pursuant to the proposed rule change has a similar result as changing a give up or CMTA, as it results in a position that resulted from a transaction moving from the account of one clearing firm to another, just at a different time and in a different manner.[17] In the above example, if Market Maker A had initially given up Clearing Member Y rather than Clearing Member X on the transactions that resulted in the 1000 long calls in class ABC, or had changed the give-up or CMTA to Clearing Member Y pursuant to Options 6, Section 1 the ultimate result would have been the same. There are a variety of reasons why firms give up or CMTA transactions to certain clearing firms (and not to non-bank affiliate clearing firms) at the time of a transaction, and the proposed rule change provides firms with a mechanism to achieve the same result at a later time.

Proposed paragraph (a)(2) states RWA Transfers may occur on a routine, recurring basis. As noted in the example above, clearing firms may impose restrictions on the amount of open positions. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. Additionally, proposed paragraph (a)(6) provides that no prior written notice to the Exchange is required for RWA Transfers. Because of the potential routine basis on which RWA Transfers may occur, and because of the need for flexibility to comply with the restrictions described above, the Exchange believes it may interfere with the ability of investors firms to comply with any Clearing Member restrictions describe above, and may be burdensome to provide notice for these routine transfers.

Proposed paragraph (a)(3) states RWA Transfers may result in the netting of positions. Netting occurs when long positions and short positions in the same series ''offset'' against each other, leaving no or a reduced position. For example, if there were 100 long calls in one account, and 100 short calls of the same option series were added to that account, the positions would offset, leaving no open positions. Currently, the Exchange permits off-exchange transfers on behalf of a Market Maker account for transactions in multiply listed options series on different exchanges, but only if the Market Maker nominees are trading for the same Member, and the options transactions on the different options exchanges clear into separate exchange-specific accounts because they cannot easily clear into the same Market Maker account at OCC. In such instances, all Market Maker positions in the exchange-specific accounts for the multiply listed class would be automatically transferred on their trade date into one central Market Maker account (commonly referred to as a ''universal account'') at the Clearing Corporation. Positions cleared into a universal account would automatically net against each other.

While RWA Transfers are not occurring because of limitations related to trading on different exchanges, similar reasoning for the above exception applies to why netting should be permissible for the limited purpose of reducing RWA. Firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. If a Market Maker clears all transactions into a universal account, offsetting positions would automatically net. However, if a Market Maker has multiple accounts into which its transactions cleared, they would not automatically net. While there are times when a firm may not want to close out open positions to reduce RWA, there are other times when a firm may determine it is appropriate to close out positions to accomplish a reduction in RWA.

In the example above, suppose after making the RWA Transfer described above, Market Maker A effects a transaction on September 25 that results in 1000 long calls in class ABC, which clears into its account with Clearing Member X. If Market Maker A had not effected its RWA Transfer in August, the 1000 long calls would have offset against the 1000 short calls, eliminating both positions and thus any RWA capital requirements associated with them. At the end of August, Market Maker A did not want to close out the 1000 short calls when it made its RWA Transfer. However, given changed circumstances in September, Market Maker A has determined it no longer wants to hold those positions. The proposed rule change would permit Market Maker A to effect an RWA Transfer of the 1000 short calls from its account with Clearing Member Y to its account with Clearing Member X (or vice versa), which results in elimination of those positions (and a reduction in RWA associated with them). As noted above, such netting would have occurred if Market Maker A cleared the September transaction directly into its account with Clearing Member Y, or had not effected an RWA Transfer in August. Netting provides market participants with appropriate flexibility to conduct their businesses as they see fit while having the ability to reduce RWA capital requirements when necessary.

RWA Transfers may not result in preferential margin or haircut treatment.[18] Additionally, RWA Transfers may only be effected for options listed on the Exchange and will be subject to applicable laws, rules, and regulations, including rules of other self-regulatory organizations (including OCC).[19]

Finally, the Exchange notes it is reserving Sections 5 and 7 of Options 6 for consistency in rule numbering with Nasdaq affiliated markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

[14] *See* Options 6B, Section 2.

[15] *See* Options 6, Section 1.

[16] The Clearing Member Trade Assignment (''CMTA'') process at The Options Clearing Corporation (''OCC'') facilitates the transfer of option trades/positions from one OCC clearing member to another in an automated fashion. Changing a CMTA for a specific transaction would allocate the trade to a different OCC clearing member than the one initially identified on the trade.

[17] The transferred positions will continue to be subject to OCC rules, as they will continue to be held in an account of an OCC member.

[18] *See* proposed paragraph (a)(4).

[19] *See* proposed introductory paragraph and proposed paragraph (a)(7). Transfers of non-Exchange listed options and other financial instruments are not governed by this proposed rule. Any RWA transfers will be subject to all applicable recordkeeping requirements applicable to Members and Clearing Members under the Securities Exchange Act of 1934, and the rules and regulations thereunder (the ''Act''), such as Rule 17a–3 and 17a–4.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] *Id.*

The Exchange's proposal is substantially the same as Cboe Rule 6.8 [sic].

In particular, the Exchange believes the proposed rule change to permit RWA Transfers will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing liquidity in the listed options market. The Exchange believes providing market participants with an efficient process to reduce RWA capital requirements attributable to open positions in clearing accounts with U.S. bank-affiliated clearing firms may contribute to additional liquidity in the listed options market, which, in general, protects investors and the public interest.

The proposed rule change, in particular the proposed changes to permit RWA transfers to occur on a routine, recurring basis and result in netting, also provides market participants with sufficient flexibility to reduce RWA capital requirements at times necessary to comply with requirements imposed on them by clearing firms. This will permit market participants to respond to then-current market conditions, including volatility and increased volume, by reducing the RWA capital requirements associated with any new positions they may open while those conditions exist. Given the additional capital that may become available to market participants as a result of the RWA Transfers, market participants will be able to continue to provide liquidity to the market, even during periods of increased volume and volatility, which liquidity ultimately benefits investors. It is not possible for market participants to predict what market conditions will exist at a specific time, and when volatility will occur. The proposed rule change to permit routine, recurring RWA Transfers (and to not provide prior written notice) will provide market participants with the ability to respond to these conditions whenever they occur. Permitting transfers on a routine, recurring basis will provide market participants with the flexibility to comply with these restrictions when necessary to avoid position limits on future options activity. In addition, with respect to netting, as discussed above, firms may maintain different clearing accounts for a variety of reasons, such as the structure of their businesses, the manner in which they trade, their risk management procedures, and for capital purposes. Netting may otherwise occur with respect to a firm's positions if it structured its clearing accounts differently, such as by using a universal account. Therefore, the proposed rule change will permit netting while allowing firms to continue to maintain different clearing accounts in a manner consistent with their businesses.

The Exchange recognizes the numerous benefits of executing options transactions occur on an exchanges, including price transparency, potential price improvement, and a clearing guarantee. However, the Exchange believes it is appropriate to permit RWA Transfers to occur off the exchange, as these benefits are inapplicable to RWA Transfers. RWA Transfers have a narrow scope and are intended to achieve a limited, benefit purpose. RWA Transfers are not intended to be a competitive trading tool. There is no need for price discovery or improvement, as the purpose of the transfer is to reduce RWA asset capital requirements attributable to a market participants' positions. Unlike trades on an exchange, the price at which an RWA Transfers occurs is immaterial—the resulting reduction in RWA is the critical part of the transfer. RWA Transfers will result in no change in ownership, and thus they do not constitute trades with a counterparty (and thus eliminating the need for a counterparty guarantee). The transactions that resulted in the open positions to be transferred as an RWA Transfer were already guaranteed by an OCC clearing member, and the positions will continue to be subject to OCC rules, as they will continue to be held in an account with an OCC clearing member. The narrow scope of the proposed rule change and the limited, beneficial purpose of RWA Transfers make allowing RWA Transfers to occur off the floor appropriate and important to support the provision of liquidity in the listed options market.

The proposed rule change does not unfairly discriminate against market participants, as all Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements of Clearing Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This process is not intended to be a competitive trading tool. The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as use of the proposed process is voluntary. All Members and non-Members with open positions in options listed on the Exchange may use the proposed off-exchange transfer process to reduce the RWA capital requirements attributable to those positions. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. RWA Transfers have a limited purpose, which is to reduce RWA attributable to open positions in listed options in order to free up capital. The Exchange believes the proposed rule change may relieve the burden on liquidity providers in the options market by reducing the RWA attributable to their open positions. As a result, market participants may be able to increase liquidity they provide to the market, which liquidity benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [23] and subparagraph (f)(6) of Rule 19b–4 thereunder.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

[23] 15 U.S.C. 78s(b)(3)(A)(iii).

[24] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2019–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2019–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2019–17 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28026 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87824; File No. SR–CboeBZX–2019–108]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Interpretation and Policy .01 of Rule 2.4 To Allow the Exchange To Provide Annual Notification to Individual Members That are Subject to Paragraph (b) of Rule 2.4

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members[5] that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume or participation as Lead Market Maker (''LMM'') on the Exchange. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 of Rule 2.4 to allow the Exchange to provide annual notification to individual Members that are subject to paragraph (b) of Rule 2.4, which requires certain Members to connect to the Exchange's backup systems and participate in functional and performance testing based on the prior calendar quarter's volume or participation as LMM on the Exchange.

As background, Regulation Systems Compliance and Integrity (''Regulation SCI'')[6] applies to certain self-regulatory organizations (including the Exchange), alternative trading systems (''ATSs''), plan processors, and exempt clearing agencies (collectively, ''SCI entities''). Specifically, Rule 1004 of Regulation SCI states that each SCI entity shall establish standards for the designation of Members that are necessary for the maintenance of fair and orderly markets in the event of the activation of the business continuity and disaster recovery plans, designate such Members in scheduled functional and performance testing of the operation of such plans no less than once every 12 months, and coordinate the testing of

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[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (''SCI Adopting Release'').

such plans on an industry- or sector-wide basis with other SCI entities.

In order to comply with the coordination requirement among SCI entities, the Exchange has conducted the required operational testing in parallel with the industry-led testing program coordinated by the Securities Industry and Financial Markets Association (''SIFMA''), which occurs on an annual basis. Currently, Interpretation and Policy .01 to Rule 2.4 requires the Exchange to identify and provide notice to designated Members under paragraph (b) on a quarterly basis based on trade activity during the previous quarter or a Member's participation as LMM on the Exchange. Any Member that receives such notice is required to participate in the next annual functional and performance testing, which generally occurs in October. As such, a Member that receives notice in the third and/or fourth quarter of the preceding year or the first and/or second quarters of the current year will be required to participate in the annual functional and performance testing. As a result, Members would be notified in October, January, April, and/or July of their requirement to connect to the Exchange's backup systems and participate in functional and performance testing scheduled for October, which means that certain Members receive notification of their designation and requirement to connect and participate in functional and performance testing only three months prior to the scheduled operational and functional testing. Further, a Member that had been designated in any of the four preceding quarters would be required to participate in the functional and performance testing even if that Member did not meet the designation requirements of subparagraphs (b)(1) in the most recent quarter (*i.e.,* the second quarter).

As proposed, the amendment would allow the Exchange to identify designated Members based on trade activity during a single quarter for a given year, and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October. As such, the proposal would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the volume requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations.[7] As the proposed amendment provides the Exchange with greater flexibility in selecting the relevant quarter's trade data for which the designated Members will be identified, the designated Members may be identified based on more recent trading activity, rather than trade activity that potentially occurred more than one year prior to such testing and thus would more accurately represent the Members who met the requirements set forth in paragraph (b)(1) of Rule 2.4.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposal is consistent with the Act because, as noted above, the proposal would allow the Exchange to identify designated Members based on activity during a single quarter for a given year and to issue one annual notification to the designated Members in preparation for the anticipated functional and performance testing, which generally occurs in October, which the Exchange believes would: (i) Simplify the Member designation and notice process; (ii) allow the Exchange to require only those Members that meet the requirements under Rule 2.4(b)(1) in the designated quarter to participate in such testing; (iii) provide the Exchange with greater flexibility as to the timing that it would provide Members with notice of their designation pursuant to paragraph (b), but still require the Exchange to provide such notice at least three months prior to the anticipated functional and performance testing; and (iv) strengthen the Exchange's coordination with other SCI entities by harmonizing the frequency of such notifications with other self-regulatory organizations, which do not provide quarterly notifications of Member designations. The proposed amendment will harmonize Exchange rules with those of other self-regulatory organizations in furtherance of the coordination of testing among SCI entities required by Rule 1004(c) of Regulation SCI. As set forth in Regulation SCI, ''SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.''[8] The Exchange believes that the proposal is consistent with such authority and legal responsibility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive proposal as it is intended to coordinate notification of Member participation requirements in the Exchange's testing of business continuity and disaster recovery plans with the annual industry-wide testing program.

[7] *See* Cboe Exchange, Inc. (''Cboe'') Rule 5.24, which states ''[Cboe] provides [ ] Trading Permit Holders with reasonable advance notice that they must participate in the testing described in paragraph (b) of this Rule 5.24.'' *See also* New York Stock Exchange (''NYSE'') Rule 49(b)(4), which states ''[a]t least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will . . . notify those member organizations that are required to participate based on such criteria.''

[8] *See* supra note 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would eliminate potential confusion across self-regulatory organizations and simplify and clarify the process of notification to designated Members pursuant to paragraph (b) of Rule 2.4. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–108. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–108 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28083 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87842; File No. SR–NYSE–2019–72]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection With the Exchange's Co-Location Services

December 23, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 16, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services to extend a fee discount for the Partial Cabinet Solution (''PCS'') bundles that the Exchange offers Users.[5]

There are four PCS bundles, each of which includes a partial cabinet; access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[7]

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (''MRC'') for the first 24 months.[8] The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.[9] The Exchange does not propose to amend the length of the discount period.

The amended portion of the Price List would read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''.	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2020: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2020: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020: $15,000 monthly.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (collectively, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[7] *Id.,* at 7396.

[8] *See* Securities Exchange Act Release No. 84893 (December 20, 2018), 83 FR 67455 (December 28, 2019) (SR–NYSE–2018–63).

[9] The Exchange previously extended the MRC reduction for one year. *See* Securities Exchange Act Release Nos. 82223 (December 6, 2017) 82 FR 58459 (December 12, 2017) (SR–NYSE–2017–62); and 79715 (December 30, 2016), 82 FR 1777 (January 6, 2017) (SR–NYSE–2016–91).

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Price List is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.'' [10]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN and IP network connections—and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.[11]

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[12]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [14] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[15]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS

[10] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[11] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[12] *See supra* note 7.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[15] *See* 78 FR 51765, *supra* note 5, at 51766. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2019–58, SR–NYSEArca–2019–97, SR–NYSECHX–2019–27, and SR–NYSENAT–2019–32.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(4).

bundles. Extending the existing eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[19]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[20]

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the

[19] *See supra* note 7.

[20] 15 U.S.C. 78f(b)(8).

Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–72 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28170 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87835; File No. 265–33]

Asset Management Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Asset Management Advisory Committee will hold a public meeting on January 14, 2020, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will begin at 9:00 a.m. (ET) and will be open to the public. The meeting will be webcast on the Commission's website at *www.sec.gov.* The Committee will have an administrative work session during lunch. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The meeting will include a discussion of various aspects of the asset management industry as well as administrative items.

DATES: The public meeting will be held on January 14, 2020. Written statements should be received on or before January 9, 2020.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–33 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Vanessa Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–33. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Commission's internet website at SEC website at (*http://www.sec.gov/comments/265–33/265–33.htm*).

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christian Broadbent or Mark Uyeda, Senior Special Counsels, or Sirimal Mukerjee, Senior Counsel, at (202) 551–6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Dalia Blass, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: December 20, 2019.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2019–28003 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87823; File No. SR–EMERALD–2019–038]

Self-Regulatory Organizations: MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 100, Definitions; Exchange Rule 503, Openings on the Exchange; Exchange Rule 515, Execution of Orders and Quotes; Exchange Rule 516, Order Types Defined; Exchange Rule 517, Quote Types Defined; Exchange Rule 518, Complex Orders; and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 19, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 100, Definitions; Exchange Rule 503, Openings on the Exchange; Exchange Rule 515, Execution of Orders and Quotes; Exchange Rule 516, Order Types Defined; Exchange Rule 517, Quote Types Defined; Exchange Rule 518, Complex Orders; and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 100, Definitions; Exchange Rule 503, Openings on the Exchange; Exchange Rule 515, Execution of Orders and Quotes; Exchange Rule 516, Order Types Defined; Exchange Rule 517, Quote Types Defined; Exchange Rule 518, Complex Orders; and Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors, to make minor non-substantive edits to update internal cross references in the Exchange's rulebook.

The Exchange is an affiliate of the Miami International Securities Exchange, LLC (''MIAX'') and incorporates by reference a number of MIAX Exchange rules into its rulebook. The MIAX Exchange recently amended Rule 1400, Definitions, found in Chapter XIV of the MIAX Exchange rules, which are its rules pertaining to the Options Order Protection and Locked and Crossed Market Plan.[3] The MIAX Exchange adopted a definition for Complex Trade which, when inserted into its proper alphabetical position in MIAX Exchange Rule 1400, caused the subsequent following definitions to be renumbered (*e.g.,* the existing subparagraph (d) became new subparagraph (e); existing subparagraph (e) became new subparagraph (f), etc . . .). As a result of the change to MIAX Exchange Rule 1400, a number of non-substantive amendments must be made to correct internal cross references within the Exchange's rulebook.

Specifically, the internal cross-reference to Eligible Exchanges in the definition of ABBO or Away Best Bid or Offer, in Exchange Rule 100, must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to Eligible Exchanges in Exchange Rule 503(e)(1)(iii) must be updated from Rule 1400(f) to Rule 1400(g). The internal cross-reference to Intermarket Sweep Orders in Rule 503(f)(2)(iv)(A)2. must be updated from Rule 1400(h) to Rule 1400(i). The internal cross-reference to the NBBO in Exchange Rule 515(a) must be updated from Rule 1400(j) to Rule 1400(k). The internal cross-reference to Intermarket Sweep Orders in Exchange Rule 516(f) must be updated from Rule 1400(h) to Rule 1400(i). Similarly in Rule 516(f) the internal cross-references to Protected Quotes and Eligible Exchanges must be updated from 1400(p) and (f) to 1400(q) and (g) respectively. Lastly, in Rule 516(f), the internal cross-reference to Protected Bid or Protected Offer must be updated from 1400(o) to 1400 (p). The internal cross-references to Protected Bid and Protected Offer in Exchange Rule 517(a)(2)(v) must be updated from 1400(o) to 1400(p). The internal cross-reference to Eligible Exchanges in Exchange Rule 518(a)(1) must be updated from Rule 1400(f) to Rule 1400(g). Finally, the internal cross-reference to the Options Order Protection and Locked/Crossed Market Plan in Exchange Rule 521(j) must be updated from Rule 1400(n) to Rule 1400(o).

The Exchange believes these changes add clarity and precision to the Exchange's rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87693 (December 9, 2019), 84 FR 68264 (December 13, 2019) (SR–MIAX–2019–48).

2. Statutory Basis

MIAX Emerald believes that its proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed non-substantive rule changes to update internal cross-references within the Exchange's Rules promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional clarity and precision in the Exchange's rules. The Exchange believes it is in the public interest for rules to be accurate and precise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the proposed change is non-substantive in nature. The non-substantive edits to update internal cross-references in the Exchange's rulebook provides precision and accuracy in the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the non-substantive edits to update internal cross-references in the Exchange's rulebook provide additional detail and clarity in the Exchange's rules, which apply equally to all Exchange Members.[6]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. Waiver of the operative delay would allow the Exchange to immediately harmonize its rules to MIAX Options to ensure that the internal cross-references in the Exchange's rulebook are correct. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EMERALD–2019–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associate with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to make available publicly. All submissions should refer to File Number SR–EMERALD–2019–038 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28086 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87810; File No. SR–FINRA–2019–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Membership Application Program (''MAP'') Rules To Address the Issue of Pending Arbitration Claims

December 20, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Membership Application Program (''MAP'') rules to help further address the issue of pending arbitration claims, as well as arbitration awards and settlement agreements related to arbitrations that have not been paid in full in accordance with their terms.[3] Specifically, the proposed rule change would: (1) Amend Rule 1014 (Department Decision) to: (a) Create a rebuttable presumption that an application for new membership should be denied if the applicant or its associated persons are subject to a pending arbitration claim, and (b) permit an applicant to overcome a presumption of denial by demonstrating its ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement or pending arbitration claim; (2) adopt a new requirement for a member, that is not otherwise required to submit an application for continuing membership for a specified change in ownership, control or business operations, including business expansion, to seek a materiality consultation if the member or its associated persons have a defined ''covered pending arbitration claim,'' unpaid arbitration award, or an unpaid arbitration settlement; (3) amend Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations) to require a member to demonstrate its ability to satisfy an unpaid arbitration award or unpaid settlement related to an arbitration before effecting the proposed change thereunder; (4) amend Rule 1013 (New Member Application and Interview) and Rule 1017 to require an applicant to provide prompt written notification of any pending arbitration claim that is filed, awarded, settled or becomes unpaid before a decision on an application constituting final action on FINRA is served on the applicant; and (5) make other non-substantive and technical changes in the specified MAP rules due to the proposed amendments.[4]

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The MAP rules govern the way in which FINRA reviews a new membership application (''NMA'') and a continuing membership application (''CMA'').[5] These rules require an applicant to demonstrate its ability to comply with applicable securities laws and FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade. FINRA evaluates an applicant's financial, operational, supervisory and compliance systems to ensure that the applicant meets the standards set forth in the MAP rules. Among other factors, the MAP rules require FINRA to consider whether persons associated with an applicant have material disciplinary actions taken against them by industry authorities, customer complaints, adverse arbitrations, pending arbitration claims, unpaid arbitration awards, pending or unadjudicated matters, civil actions, remedial actions imposed or other industry-related matters that could pose a threat to public investors.[6]

FINRA is proposing to amend the MAP rules in several ways. First, FINRA is proposing to amend one standard for admission and the corresponding factors therein relating to the presumption to deny an application for new or continuing membership. Second, FINRA is proposing to clarify the various ways in which an applicant for new or continuing membership may demonstrate its ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or a pending arbitration claim during the application review process, and to preclude an applicant from effecting any contemplated change in ownership, control or business operations until such demonstration is made and FINRA approves the application. Third, FINRA

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Effective May 8, 2019, FINRA adopted the NASD Rule 1010 Series (Membership Proceedings), among other rules, in the consolidated FINRA rulebook, without substantive change. The MAP rules now reside under the FINRA Rule 1000 Series (Member Application and Associated Person Registration) as FINRA Rules 1011 through 1019. *See* Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–009). For purposes of this filing, all references to the MAP rules are to the FINRA Rule 1000 Series. The proposed rule change would also update cross-references and make other non-substantive, technical changes, and make corresponding changes to the Forms NMA and CMA. FINRA is separately developing changes to the MAP rules in connection with the retrospective review of this rule set. *See Regulatory Notice* 18–23 (July 2018) (''*Notice* 18–23'') (requesting comment on a proposal regarding the MAP rules).

[4] For example, the proposed rule change would require the renumbering of some paragraphs in Rules 1011 and 1014 and the updating of cross-references.

[5] Unless otherwise specified, the term ''application'' refers to either an NMA (or Form NMA) or CMA (or Form CMA), depending on context.

[6] *See generally* Rules 1014(a)(3) and 1014(a)(10).

is proposing to mandate a member firm to seek a materiality consultation in two situations in which specified pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements are involved. Finally, FINRA is proposing to require an applicant for new or continuing membership to notify FINRA of any pending arbitration claim that is filed, awarded, settled or becomes unpaid before FINRA renders a decision on the application.

FINRA believes that these proposed amendments to select portions of the MAP rules would enable FINRA to take a stronger approach to addressing the issue of pending arbitration claims, as well as arbitration awards and settlement agreements related to arbitrations that have not been paid in full in accordance with their terms, in connection with the application review process. In addition, the proposed amendments would enable FINRA to consider the adequacy of the supervision of individuals with pending arbitration claims. As described below, the proposed amendments are intended to address concerns regarding situations where: (1) A FINRA member firm hires individuals with pending arbitration claims, where there are concerns about the payment of those claims should they go to award or result in a settlement, and concerns about the supervision of those individuals; and (2) a member firm with substantial arbitration claims seeks to avoid payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers and owners, to another firm and closing down.

The proposed rule change would impact members that have elected to be treated as capital acquisition brokers (''CABs'') and are subject to CAB rules. CAB Rules 111 through 118 incorporate by reference several MAP rules, including Rules 1011, 1013, 1014 and 1017.[7] The proposed amendments would make conforming changes to CAB Rules 111 through 118, as applicable.

Proposed Rule Change

A. Rule 1014(a)(3)—Compliance with Industry Rules, Regulations, and Laws

Rule 1014(a) sets forth 14 standards for admission FINRA must consider in determining whether to approve an application. Currently, Rule 1014(a)(3) (''Standard 3'') requires FINRA to determine whether an applicant for new or continuing membership and its associated persons ''are capable of complying with'' the federal securities laws, the rules and regulations thereunder, and FINRA rules. Standard 3 sets forth six factors that FINRA must consider in making that determination.[8] One factor, set forth under Rule 1014(a)(3)(B), requires FINRA to consider whether an applicant's or its associated person's record reflects a sales practice event, a pending arbitration, or a pending private civil action. Another factor appears under Rule 1014(a)(3)(C) and requires FINRA to consider, among other regulatory history, whether an applicant, its control persons, principals, registered representatives, other associated persons, any lender of five percent or more of the applicant's net capital, and any other member with respect to which these persons were a controlling person or a five percent lender of its net capital, is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements.

Further, under Rule 1014(b)(1), where an applicant or its associated person is subject to certain regulatory history enumerated in Standard 3, ''a presumption exists that the application should be denied.''[9] Rule 1014(a)(3)(C) is one of several factors that trigger the presumption. The existence of such an event ''[raises] a question of capacity to comply with the federal securities laws and the rules of [FINRA],'' which should result in a rebuttable presumption to deny the application.[10] However, the existence of a record of a pending arbitration, as set forth in Rule 1014(a)(3)(B), is currently not among the enumerated factors that trigger the presumption to deny an application.

1. Rebuttable Presumption to Deny an NMA (Proposed Rule 1014(b)(1))

FINRA is concerned about prospective applicants for new membership hiring principals and registered persons with pending arbitration claims without having to demonstrate how those claims would be paid if they go to award or result in a settlement. In addition, FINRA is concerned about a new member's supervision of such individuals who may have a history of noncompliance. Accordingly, FINRA is proposing to amend Rule 1014(b)(1) to specify that a presumption of denial would exist if a new member applicant or its associated persons are the subject of a pending arbitration claim. Creating a presumption of denial in connection with a pending arbitration claim for an NMA would shift the burden to the new member applicant to demonstrate how its pending arbitration claims would be paid should they go to award or result in a settlement. In addition, the proposed amendment would spotlight the firm's supervision of individuals with pending arbitration claims. This presumption of denial for a pending arbitration claim would not apply to an existing member firm filing a CMA. Instead, consistent with today's practice, FINRA would continue to consider whether an applicant's or its associated persons are the subject of a pending arbitration claim in determining whether the applicant for continuing membership is ''capable of complying with'' applicable federal securities laws and FINRA rules.[11]

2. Evidence of Ability To Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements, or for New Member Applications, Pending Arbitration Claims (Proposed IM–1014–1)

Proposed IM–1014–1 would provide that an applicant may demonstrate its ability to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement or a pending arbitration claim, through an escrow agreement, insurance coverage, a clearing deposit, a guarantee, a reserve fund, or the retention of proceeds from an asset transfer, or such other forms of documentation that FINRA may determine to be acceptable.[12] In addition, under the proposed interpretive material, an applicant may

[7] *See generally* CAB Rule 111 (Membership Proceedings) (referencing Rule 1011), CAB Rule 112 (New Member Application and Interview) (referencing Rule 1013), CAB Rule 113 (Department Decision) (referencing Rule 1014), and CAB Rule 116 (Application for Approval of Change in Ownership, Control, or Business Operations) (referencing Rule 1017).

[8] *See* Rule 1014(a)(3)(A)–(F).

[9] *See also* Rule 1017(h)(1), which pertains to CMAs and contains language identical to Rule 1014(b)(1). FINRA would make conforming changes to Rule 1017(h)(1).

[10] *See Notice to Members* 04–10 (February 2004).

[11] For purposes of determining whether an applicant meets Standard 3, FINRA's consideration of an applicant's or associated person's pending arbitration claim would be separated from Rule 1014(a)(3)(B) and moved to proposed Rule 1014(a)(3)(E).

[12] FINRA expects to make conforming amendments to Forms NMA and CMA. FINRA notes that Form CMA currently instructs the applicant to provide supporting documentation to show that such applicant is able to meet Standard 3. Specifically, if the CMA involves a transfer of assets with no corresponding transfer of associated liabilities, and there are pending arbitration claims or closed or settled arbitration matters, Form CMA requires the applicant to provide a written ''Arbitration Plan,'' explaining, among other things, how the applicant will handle the arbitrations and awards that may result. An applicant may show that it has a reserve fund or will retain the proceeds of the asset transfer to satisfy the award. *See* Form CMA, Standard 3, Question 2.d. (within the section titled, ''Provide supporting documents'').

provide a written opinion of an independent, reputable U.S. licensed counsel knowledgeable in the area as to the value of the arbitration claims (which might be zero). Proposed IM–1014–1 would also provide that to overcome the presumption to deny the application, the applicant must guarantee that any funds used to evidence the applicant's ability to satisfy any awards, settlements, or claims will be used for that purpose. Any demonstration by an applicant of its ability to satisfy these outstanding obligations would be subject to a reasonableness assessment by FINRA.

B. Materiality Consultation

A member is required to file a CMA when it plans to undergo an event specified under Rule 1017 (*e.g.,* acquisition or transfer of the member's assets, or a business expansion). In some cases, a change contemplated by a firm may not clearly fall within one of the events described in Rule 1017, and so before taking steps to prepare a CMA, a member has the option of seeking guidance, or a materiality consultation, from FINRA on whether such proposed event would require a CMA.[13] The materiality consultation process is voluntary, and FINRA has published guidelines about this process on *FINRA.org.*[14] A request for a materiality consultation, for which there is no fee, is a written request from a member firm for FINRA's determination on whether a contemplated change in business operations or activities is material and would therefore require a CMA or whether the contemplated change can fit within the framework of the firm's current activities and structure without the need to file a CMA for FINRA's approval. The characterization of a contemplated change as material depends on an assessment of all the relevant facts and circumstances, including, among others, the nature of the contemplated change, the effect the contemplated change may have on the firm's capital, the qualifications and experience of the firm's personnel, and the degree to which the firm's existing financial, operational, supervisory and compliance systems can accommodate the contemplated change.[15] Through this consultation, FINRA may communicate with the member to obtain further documents and information regarding the contemplated change and its anticipated impact on the member. Where FINRA determines that a contemplated change is material, FINRA will instruct the member to file a CMA if it intends to proceed with such change. Ultimately, the member is responsible for compliance with Rule 1017. If FINRA determines during the materiality consultation that the contemplated business change is material, then the member potentially could be subject to disciplinary action for failure to file a CMA under Rule 1017.[16]

To help further incentivize payment of arbitration awards and settlements, FINRA is proposing to preclude a member from effecting specified changes in ownership, control, or business operations, including business expansions involving a ''covered pending arbitration claim'' (as defined under proposed Rule 1011(c)), unpaid arbitration award, or unpaid settlement related to an arbitration without first seeking a materiality consultation from FINRA as described below.[17]

1. Mandatory Materiality Consultation for Business Expansion To Add One or More Associated Persons Involved in Sales (Proposed IM–1011–2 and Proposed Rules 1011(c)(1) and 1017(a)(6)(B))

Rule 1017 specifies the changes in a member's ownership, control, or business operations that require a CMA and FINRA's approval.[18] Among the events that require a CMA are a ''material change in business operations,'' which is defined to include, but is not limited to: (1) Removing or modifying a membership agreement restriction; (2) market making, underwriting or acting as a dealer for the first time; and (3) adding business activities that require a higher minimum net capital under SEA Rule 15c3–1.[19] In addition, a CMA is required for business expansions to increase the number of associated persons involved in sales, offices, or markets made that are a material change in business operations.[20] However, IM–1011–1 (Safe Harbor for Business Expansions) creates a safe harbor for incremental increases in these three categories of business expansions that will be presumed not to be material. Under this safe harbor provision, a member, subject to specified conditions and thresholds, may undergo such business expansions without filing a CMA.[21]

FINRA is concerned that the changes in a member firm's ownership, control, or business operations as currently described in Rule 1017, and the availability of the safe harbor for a business expansion to increase the number of associated persons involved in sales could allow a member to, for example, hire principals and registered representatives with substantial pending arbitration claims without giving consideration to how the firm would supervise such individual or the potential financial impact on the firm if the individual, while employed at the hiring firm, engages in additional potential misconduct that results in a customer arbitration. Accordingly, FINRA is proposing to add new interpretive material, IM–1011–2 (Business Expansions and Covered Pending Arbitration Claims), to provide that if a member is contemplating to add one or more associated persons involved in sales and one or more of those associated persons has a ''covered

[13] *See* IM–1011–1 (stating, ''[f]or any expansion beyond these [safe harbor] limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017.''); *see also Notice to Members* 00–73 (October 2000) (''*Notice* 00–73'') (stating, whether, based upon all the facts and circumstances, a change and expansion that falls outside of the safe harbor provisions are material, ''[a] member may, but is not required to, contact the District Office to obtain guidance on this issue.'').

[14] *See* The Materiality Consultation Process for Continuing Membership Applications, *https://www.finra.org/rules-guidance/guidance/materiality-consultation-process.*

[15] *See Notice* 00–73.

[16] *See Notice* 00–73.

[17] In a separate proposal, FINRA is proposing to mandate materiality consultations under other circumstances. *See Notice* 18–23 (seeking comment on a proposal to the MAP rules that would, among other things, codify the materiality consultation process and mandate a consultation under specified circumstances such as where an applicant seeks to engage in, for the first time, retail foreign currency exchange activities, variable life settlement sales to retail customers, options activities, or municipal securities activities).

[18] *See* Rule 1017(a). The events that require a member to file a CMA for approval before effecting the proposed event are: (1) a merger of the member with another member, unless both members are members of the New York Stock Exchange, Inc. (''NYSE'') or the surviving entity will continue to be a member of the NYSE; (2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the NYSE; (3) direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the NYSE; (4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a material change in business operations as defined in Rule 1011(k).

[19] *See* Rule 1011(k).

[20] *See* Rule 1017(b)(2)(C) (stating, ''If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.'').

[21] The safe harbor is unavailable to a member that has a membership agreement that contains a specific restriction as to one or more of the three areas of expansion or to a member that has a ''disciplinary history'' as defined in IM–1011–1.

pending arbitration claim'' (as that term is defined under proposed Rule 1011(c)(1)), an unpaid arbitration award or an unpaid settlement related to an arbitration, and the member is not otherwise required to file a CMA, the member may not effect the contemplated business expansion unless the member complies with the requirements in proposed Rule 1017(a)(6)(B).

Proposed Rule 1017(a)(6)(B) would require a member firm to file a CMA for approval of the business expansion described in proposed IM–1011–2 unless the member first submits a written request to FINRA seeking a materiality consultation for the contemplated business expansion. The written request must address the issues that are central to the materiality consultation. As part of the materiality consultation, FINRA would consider the written request and other information or documents the member provides to determine in the public interest and the protection of investors that either: (1) The member is not required to file a CMA in accordance with Rule 1017 and may effect the contemplated business expansion; or (2) the member is required to file a CMA in accordance with Rule 1017 and the member may not effect the contemplated business expansion unless FINRA approves the CMA.

A materiality consultation for this type of business expansion would allow FINRA to, among other things, assess the nature of the anticipated activities of the principals and registered representatives with arbitration claims, unpaid arbitration awards or arbitration settlements; the impact on the firm's supervisory and compliance structure, personnel and finances; and any other impact on investor protection raised by adding such individuals. If FINRA determines that a member must file a CMA, it would be subject to the application review process set forth under the MAP rules, including a review of any record of a pending arbitration claim and the presumption of denial with respect to any unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements.

For purposes of a business expansion to add one or more associated persons involved in sales, FINRA is proposing to define, under proposed Rule 1011(c)(1), a ''covered pending arbitration claim'' as: (1) An investment-related, consumer-initiated claim filed against the associated person in any arbitration forum that is unresolved; and (2) whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the hiring member's excess net capital. For purposes of this definition, the claim would include only claimed compensatory loss amounts, not requests for pain and suffering, punitive damages or attorney's fees, and shall be the maximum amount for which the associated person is potentially liable regardless of whether the claim was brought against additional persons or the associated person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

FINRA believes that the definition of a ''covered pending arbitration claim'' for purposes of a business expansion as described in proposed IM–1011–2 and proposed Rule 1017(a)(6)(B) is appropriate because if an individual has substantial arbitration claims, those claims could be an indication that the individual may engage in future potential misconduct that could result in additional arbitration claims.[22] Under such circumstances, if the customer names the hiring member firm in any such additional arbitration claims, FINRA is concerned whether a hiring member firm with low excess net capital would be able to satisfy any obligation that may result from the arbitration claims including a customer award or settlement. By requiring a materiality consultation if a member firm is contemplating hiring an individual with a ''covered pending arbitration claim,'' FINRA would be able to assess, among other things, the adequacy of any supervisory plan the member firm has in place for the individual. In addition, the materiality consultation would allow FINRA to discuss with the member firm the potential impact on its finances if the member firm hires the individual and the individual engages in future potential misconduct while employed at the member firm that results in an arbitration claim against the member firm.

If the SEC approves the proposed rule change, FINRA will reassess the definition of ''covered pending arbitration claim'' for purposes of proposed IM–1011–2 and proposed Rule 1017(a)(6)(B) after FINRA has had experience with the application of the rule to determine its impact and if the definition requires modification. In addition, FINRA invites comment on the proposed definition.

2. Mandatory Materiality Consultation for Any Acquisition or Transfer of Member's Assets (Proposed Rule 1017(a)(6)(A) and Proposed Rule 1011(c)(2))

Rule 1017(a) requires a member to file a CMA for direct or indirect acquisitions or transfers of 25 percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are NYSE members.[23]

FINRA is concerned that this 25 percent threshold could permit a firm with pending arbitration claims that ultimately produce awards or settlements to avoid satisfying those awards or settlements by transferring assets without encumbrance and then closing down. Accordingly, FINRA is proposing to amend Rule 1017(a) to add new subparagraph (6)(A) to provide that if a member is contemplating any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an associated person of the transferring member has a covered pending arbitration claim (as that term is defined under proposed Rule 1011(c)(2)), an unpaid arbitration award or an unpaid settlement related to an arbitration, and the member is not otherwise required to file a CMA, the member may not effect the contemplated transaction unless the member first submits a written request to FINRA seeking a materiality consultation for the contemplated acquisition or transfer. Similar to proposed subparagraph (6)(B) in Rule 1017(a), the written request must address the issues that are central to the materiality consultation. As part of the materiality consultation, FINRA would consider the written request and other information or documents provided by the member to determine in the public interest and the protection of investors that either: (1) The member is not required to file a CMA in accordance with Rule 1017 and may effect the contemplated acquisition or transfer; or (2) the member is required to file a CMA in accordance with Rule 1017 and the member may not effect the contemplated business acquisition or transfer unless FINRA approves the CMA.

[22] Recent academic studies provide evidence that the past disciplinary and other regulatory events associated with a firm or individual can be predictive of similar future events. *See* Hammad Qureshi and Jonathan Sokobin, Do Investors Have Valuable Information About Brokers? (FINRA Office of the Chief Economist Working Paper, August 2015). *See also* Mark Egan, Gregor Matvos, and Amit Seru, The Market for Financial Adviser Misconduct, J. Pol. Econ. 127, No. 1 (February 2019): 233–295.

[23] *See supra* note 18.

During the course of this consultation, FINRA would consider, among other relevant facts and circumstances, whether the contemplated acquisition or transfer could result in non-payment of an arbitration claim should it go to award or result in a settlement, or the continued non-payment of such arbitration award or settlement. If FINRA determines that a member must file a CMA, it would be subject to the application review process set forth under the MAP rules, including a review of any record of a pending arbitration claim and the presumption of denial with respect to any unpaid arbitration awards, other adjudicated customer awards or unpaid arbitration settlements.

For purposes of this proposed amendment, FINRA is proposing to define, under proposed Rule 1011(c)(2), a ''covered pending arbitration claim'' as: (1) An investment-related, consumer-initiated claim filed against the transferring member or its associated persons in any arbitration forum that is unresolved; and (2) whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the transferring member's excess net capital. For purposes of this definition, the claim amount would include only claimed compensatory loss amounts, not requests for pain and suffering, punitive damages or attorney's fees, and shall be the maximum amount for which the associated person is potentially liable regardless of whether the claim was brought against additional persons or the associated person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

FINRA believes that the definition of a ''covered pending arbitration claim'' for purposes of a direct or indirect acquisition or transfer as described in proposed Rule 1017(a)(6)(A) is an appropriate measure because a member with substantial arbitration claims that is seeking to transfer its assets could be an indication of attempts to insulate itself from responsibility for the payment of pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements particularly when there is no corresponding transfer of liabilities. Under such circumstances, FINRA is concerned whether a transferring member firm with low excess net capital would be able to satisfy any obligation that may result from the arbitration claims, including a customer award or settlement. By requiring a materiality consultation where a member firm is contemplating any direct or indirect acquisition or transfer involving a ''covered pending arbitration claim,'' FINRA would be able to assess, among other things, the adequacy of any plan the member firm has in place to satisfy pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements.

As noted above, FINRA invites comment on the proposed definition and if the SEC approves the proposed rule change, FINRA will reassess the definition of ''covered pending arbitration claim'' for purposes of proposed Rule 1017(a)(6)(A) after FINRA has had experience with the application of the rule to determine its impact and if the definition requires modification.

C. Other Proposed Amendments

1. Notification of Changes

Rule 1013(a) sets forth a detailed list of items that must be submitted with an NMA.[24] Rule 1017(b) sets forth the documents or information required to accompany a CMA, depending on the nature of the CMA. FINRA is proposing to amend Rules 1013 and 1017 to add new paragraphs that would appear as proposed Rules 1013(c) and 1017(h), to require an applicant to provide prompt notification, in writing, of any pending arbitration claim involving the applicant or its associated persons that is filed, awarded, settled or becomes unpaid before a decision on the application constituting final action of FINRA is served on the applicant.[25] Thus, any such unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or pending arbitration claim (for a new member applicant only) that comes to light in this manner during the application review process would result in FINRA being able to presumptively deny the application under the applicable factors set forth in Standard 3 and the ability of the applicant to overcome such presumption by demonstrating its ability to satisfy the obligation, as discussed above.

2. Timing and Conditions for Effecting Change Under Rule 1017

Rule 1017(c) describes the timing and conditions for effecting a change under Rule 1017.[26] Rule 1017(c)(1) requires a member to file a CMA for approval of a change in ownership or control at least 30 days before the change is expected to occur. While a member may effect the change prior to the conclusion of FINRA's review of the CMA, FINRA may place interim restrictions on the member based upon the standards in Rule 1014 pending a final determination.[27] Under Rule 1017(c)(2), a member may file a CMA to remove or modify a membership agreement restriction at any time, but any such existing restriction shall remain in effect during the pendency of the proceeding. Finally, Rule 1017(c)(3) permits a member to file a CMA for approval of a material change in business operations at any time, but the member may not effect such change until the conclusion of the proceeding, unless FINRA and the member otherwise agree.

FINRA is proposing to amend Rule 1017(c) by adding new subparagraph (4) to provide that, notwithstanding the existing timing and conditions for effecting a change as described under Rule 1017(c)(1) through (3), where a member or an associated person has an unpaid arbitration award or unpaid settlement related to an arbitration at the time of filing a CMA, the member may not effect such change until demonstrating that it has the ability to satisfy such obligations in accordance with Rule 1014 and proposed IM–1014–1, as discussed above, and obtaining approval of the CMA.[28]

[24] The list of items set forth under Rule 1013(a) includes, among other things, documentation of disciplinary history and certain regulatory, civil, and criminal actions, arbitrations, and customer complaints for the applicant and its associated persons.

[25] FINRA expects to make conforming changes to Forms NMA and CMA, but notes that Form CMA currently requires the applicant seeking approval of an asset transfer to promptly update the information provided regarding arbitration claims. Such update should include new arbitrations filed, settlements made and awards granted against the applicant. *See* Form CMA, Standard 3, Question 4.b.

[26] In a separate proposal, FINRA is considering whether to eliminate the timing considerations for filing a CMA depending upon the type of contemplated change or event to require that any change specified under Rule 1017 should not be permitted until such time as the CMA has been approved by FINRA. *See Notice* 18–23 (seeking comment on a proposal to the MAP rules that would, among other things, delete Rule 1017(c) in its entirety).

[27] Interim restrictions are meant for the protection of investors and ordinarily would not prevent a transaction from moving forward. However, there may be some instances where the protection of investors will require that interim restrictions will prohibit or delay a transaction from closing. *See Notice to Members* 02–54 (August 2002).

[28] FINRA expects to make conforming changes to Forms NMA and CMA. FINRA notes that where an applicant is seeking FINRA's approval of a CMA to transfer assets with no corresponding transfer of associated liabilities, and there is an unpaid arbitration award, Form CMA currently requires the applicant to provide proof that the award was satisfied in full and in the case of an unpaid award, the applicant must pay the award in full before closing the transaction. *See* Form CMA, Standard 3, Question 2.a. (within the section titled, ''Provide supporting documents'').

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[29] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will allow FINRA to better take into account the issue of pending arbitration claims, as well as arbitration awards and settlement agreements related to arbitrations that have not been paid in full in accordance with their terms, in connection with the NMA or CMA processes. FINRA believes that the proposed amendments will strengthen FINRA's ability to consider the adequacy of the supervision of individuals with pending arbitration claims and, therefore, who may have a history of noncompliance, and how a member firm will address the payment of an existing or potential arbitration claim should it go to award or result in a settlement. In addition, FINRA believes that the proposed amendments will give FINRA the authority to carefully assess, at an earlier stage of a member's contemplated business transaction or expansion, the relevant facts and circumstances surrounding pending arbitration claims.

Among other things, the proposed amendments will help address concerns regarding situations where: (1) A FINRA member firm hires individuals with pending arbitration claims, where there are concerns about the payment of those claims should they go to award or result in a settlement, and the adequacy of the supervision of those individuals; and (2) a member firm with substantial arbitration claims seeks to avoid payment of the claims should they go to award or result in a settlement by shifting its assets, which are typically customer accounts, or its managers and owners, to another firm and closing down.

[29] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

1. Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet its regulatory objectives.

2. Regulatory Need

The MAP rules are intended to promote investor protection by applying uniform standards for admission and by reviewing changes to ownership, control, or business operations. While the current MAP rules give FINRA the ability to review pending arbitration claims, unpaid arbitration awards, and unpaid arbitration settlements in determining whether to grant or deny an application, the proposed amendments would strengthen the MAP rules when claimants may need additional protections. Currently, claimants may be at risk if the individuals or firms responsible actively maneuver to avoid payment of awards (*e.g.,* by joining or transferring assets to a different member firm).[30]

3. Economic Baseline

The economic baseline for the proposed amendments is the current set of MAP rules and related guidance, and FINRA practices. The current rules include unpaid arbitration awards and settlements, but not pending arbitration claims, in the presumption of denial; the definition of a material change in business operations and the availability of a safe harbor for some business expansions; and the requirements for a member firm to file a CMA relating to asset acquisitions or transfers. The proposed amendments would affect prospective and existing member firms, and associated persons. The proposed amendments would also affect the current and future customers of prospective and existing member firms including those that have brought or may bring claims against member firms and associated persons.

A. NMAs

In order to get a better understanding of the potential scope of the proposed amendments, FINRA reviewed 317 NMAs that it received from January 2015 through December 2017.[31] Among these applications, FINRA identified few new member applicants or their associated persons as having a pending arbitration claim at the time of FINRA's receipt of the NMA.[32] Among the 317 NMAs, FINRA identified 13 NMAs (or four percent) where the new member applicant or its associated persons had a pending arbitration claim at the time of receipt of the application.[33] Under the proposed amendments, FINRA could have presumptively denied these NMAs. FINRA also identified one NMA as relating to a customer claim that resulted in an award that went unpaid.[34]

B. CMAs

FINRA also reviewed 1,051 CMAs that it received from January 2015 through December 2017.[35] This sample of CMAs only provides a potential indication of the member firms that

[30] FINRA identified five customer arbitration claims that (a) closed between 2015 and 2017 and resulted in an award that went unpaid and (b) the associated persons responsible for the unpaid awards transitioned from one member firm to another while the claim was pending. The total amount of unpaid awards relating to the five customer claims was $2.5 million. Three of the four associated persons relating to the unpaid awards were suspended or barred from the industry by FINRA. The fourth associated person declared bankruptcy but was no longer registered as a broker.

[31] These NMAs were either approved in whole or with restrictions, denied, withdrawn, rejected, or lapsed.

[32] The statistics on pending arbitration claims in this discussion relate only to claims in the arbitration forum administered by FINRA. The proposed amendments also would apply to claims in other venues. Information describing claims in other arbitration forums, however, is generally not available. FINRA's estimates of the number of firms that may be impacted by the proposed amendments are therefore likely lower than the true number. Further, FINRA is not able to estimate the total amount of monetary compensation claimants received from the arbitration cases discussed because information that identifies the settlement amount relating to a particular case is not available.

[33] Among these 13 NMAs, there were seven pending customer arbitration claims filed against associated persons prior to FINRA's receipt of the application, and among these seven customer claims, three resulted in a settlement, one closed by hearing, and three were withdrawn. The total amount of compensatory damages sought by customers was over $1.9 million (including the claims that resulted in a settlement). In the case closed by hearing, the customer was awarded compensatory damages of approximately $76,000.

[34] The firm withdrew the NMA. The customer arbitration claim resulted in an award prior to FINRA's receipt of the NMA. The amount of the damages that went unpaid is approximately $250,000. The associated person who failed to pay the awarded damages has been suspended by FINRA.

[35] The CMAs were either approved in whole or with restrictions, denied, withdrawn, rejected, or lapsed.

could be impacted by the proposed amendments. A member firm may elect to proceed with effecting a change in business operations because it independently determines, without seeking guidance from FINRA through a materiality consultation, that such contemplated change falls within the safe harbor parameters or that such transaction does not represent a material change in business operations that would require a CMA. In these cases, a member firm is not obligated to proactively notify FINRA of the independent determination.[36] Thus, the number of member firms that potentially may be subject to the proposed amendments, including those that effect an increase in the number of associated persons involved in sales under the safe harbor or effect some other change in business operations that is, in the member firm's view, not material, may be different than the member firms that filed a CMA and are part of the sample.

Of the 1,051 CMAs, 65 involved the hiring of associated persons. FINRA identified four of the 65 CMAs where the associated person being hired had a pending customer arbitration claim. Under the proposed amendments, the pending customer arbitration claims for all four of the CMAs would have been considered covered pending arbitration claims.[37] An additional 154 of the 1,051 CMAs were identified as relating to asset acquisitions (17) or transfers (137). FINRA identified 44 CMAs (29 percent of 154) where the transferring member or an associated person of the transferring member had a pending customer arbitration claim at the time of the filing.[38] Under the proposed amendments, the pending customer arbitration claims for 25 of the 44 CMAs would have been considered covered pending arbitration claims. FINRA also identified five of the CMAs as relating to six customer claims that resulted in an award that went unpaid.[39]

4. Economic Impact

FINRA believes that the proposed amendments to the MAP rules would enhance the review of applications by strengthening the MAP rules in relation to pending arbitration claims and unpaid arbitration awards and settlements.

The proposed amendments would benefit claimants and potential claimants by decreasing the risk that firms are avoiding the payment of awards or settlements by transferring their assets, including capital and customer accounts, to another firm. Firms can shift their assets to another firm by starting a new firm, or by selling or transferring assets to an existing firm. A decrease in the ability of firms to avoid satisfying their arbitration awards or settlements in this manner may result in a higher likelihood that they are paid in full in accordance with their terms. The proposed amendments could also benefit the current and future customers of new member applicants and member firms that seek a materiality consultation by increasing FINRA's ability to assess, among other things, the adequacy of the supervisory plan the member firm has in place for the associated persons who may have a history of non-compliance.

A. Rebuttable Presumption To Deny an NMA

Proposed Rule 1014(b)(1) would specify that a presumption of denial would exist if a new member applicant or its associated persons are subject to a pending arbitration claim. By establishing a presumption of denial, the proposed rule change would shift the burden to the new member applicant to demonstrate how pending arbitration claims would be paid if they go to an award. Proposed Rule 1014(b)(1) would impose both direct and indirect costs on new member applicants.

New member applicants with pending arbitration claims would incur direct costs. The costs include the time and expense of firm staff and outside experts to demonstrate the ability to satisfy the claims. The costs would be in addition to the costs new member applicants incur to demonstrate their ability to meet the 14 standards for admission under Rule 1014(a). In addition, new member applicants and their associated persons may incur the opportunity costs associated with setting aside funds that may otherwise be used for new business. A new member applicant may incur more opportunity costs than is necessary if it sets aside more capital than the actual amount of the award.

New member applicants may also incur indirect costs if the rebuttal process delays the applicant's ability to begin earning revenues or otherwise negatively impacts the business. The magnitude of these costs is related to the ability of the new member applicant and FINRA to adequately gauge the likelihood and size of an award or settlement. However, as noted above, FINRA estimates that few associated persons related to new member applicants will have pending arbitration claims at the time of the filing.[40] The majority of new member applicants are therefore unlikely to be affected by the proposed amendments.

B. Materiality Consultations

The proposed amendments would also mandate a member firm to seek a materiality consultation for specified business changes—hiring an associated person involved in sales, or any direct or indirect acquisition or transfer of assets—where the member firm or associated person, as applicable, has an unpaid arbitration award or settlement related to an arbitration, or a defined covered pending arbitration claim, unless the member firm is otherwise required to file a CMA. FINRA believes that an unpaid arbitration award or settlement poses a severe risk to claimants that would warrant a materiality consultation under any circumstances. FINRA also believes that the proposed definition of a covered pending arbitration claim, which

[36] Under IM–1011–1, a firm would remain obligated to keep records of increases in personnel, offices, and markets made to determine whether they are within the safe harbor.

[37] From January 2015 to December 2017, among all member firms, 480 associated persons were hired with a pending arbitration claim at the time of hiring. These pending claims would have been considered ''covered pending arbitration claims'' under the proposed amendments for 186 of the associated persons (39 percent of 480) and would not have been considered covered pending arbitration claims for the remaining 294 associated persons (or 61 percent of 480). FINRA does not know how many of the associated persons were involved in sales. This estimate, therefore, provides an upper bound for the number of materiality consultations member firms would have been required to seek under the proposed amendments. *See supra* note 30 for a discussion of the unpaid awards relating to associated persons who transitioned from one member firm to another while the claim was pending.

[38] Thirty-four of the CMAs were approved, and 10 were withdrawn or not substantially completed and therefore rejected. There were 300 pending customer arbitration claims as of the receipt of the CMAs. The pending claims included claims made against the applicant or its associated persons. Of the 300 pending arbitration claims, 184 resulted in a settlement, 48 closed by hearing or on the papers, 52 closed by other means including 32 that were withdrawn, and 16 remained open. Customers requested a total of $311.3 million in compensatory relief (including the claims that resulted in a settlement); and in the claims resulting in an arbitration award in favor of customers, customers were awarded approximately $9.9 million in compensatory damages.

[39] Three of the CMAs were withdrawn, and two were approved. Three of the six customer claims were closed prior to the filing of the CMA, whereas the other three were still pending. For the two approved CMAs, the cases which resulted in an unpaid customer award closed at least one year after the decision was served. Five of the six customer awards went unpaid by a member firm, whereas the other went unpaid by an associated person. The total amount of damages that went unpaid is approximately $3.4 million. The member firms have either cancelled their membership or were expelled by FINRA, and the associated person has been suspended by FINRA.

[40] *See supra* note 33 and accompanying text.

focuses on investment-related, consumer-initiated claims (individually or, if there is more than one claim, in the aggregate) that exceed the excess net capital of the transferring or hiring member firm (as applicable), represents an objective benchmark that would provide FINRA the opportunity to review the specified business changes to assess whether they may adversely affect former, current or future customers in a material way.

For a member firm transferring assets, FINRA believes that the relative size of covered pending arbitration claims may signal that the firm may be attempting to avoid the payment of awards or settlements by transferring assets, including capital and customer accounts, to another firm. For member firms adding one or more associated persons involved in sales, the relative size of the covered pending arbitration claims may foreshadow future potential misconduct by such individuals that could result in additional arbitration claims.[41] Under such circumstances, if the customer names the hiring member firm in any such additional arbitration claims, FINRA is concerned whether a hiring member firm with low excess net capital would be able to satisfy any obligation that may result from the arbitration claims, including a customer award or settlement.

Member firms that would be required to seek a materiality consultation would incur direct costs. Similar to the additional direct costs associated with NMAs, the costs may include the time and expense of firm staff and outside experts to provide information and documents that demonstrate the ability to satisfy the unpaid awards or settlements, or covered pending arbitration claims. Member firms that would be required to seek a materiality consultation and their associated persons may also incur the opportunity costs associated with setting aside funds that may otherwise be used for new business.

Member firms that seek a materiality consultation may also incur costs relating to a delay in effecting the contemplated expansion or transaction. A delay may negatively impact the value of the expansion or transaction and may lead to a loss of business opportunities. Given the experience of FINRA, this delay is anticipated to be small as the time for a materiality consultation has recently averaged 12 days; this time period, however, may lengthen depending on the complexity of the contemplated expansion or transaction.

Business activities that decrease the amount of excess net capital available may increase the likelihood that member firms would be required to seek a materiality consultation. In response, member firms may constrain business activities to maintain a level of excess net capital in order to demonstrate their ability to pay pending arbitration claims (or pay unpaid awards or settlements) in the event a materiality consultation is required. As described in the Economic Baseline, a number of CMAs relate to the hiring of an associated person with a covered pending arbitration claim or the acquisition or transfer of a member's assets where the transferring member or an associated person of the transferring member had a covered pending arbitration claim.[42]

FINRA may require member firms that seek a materiality consultation to file a CMA. FINRA would then consider whether the member firm meets each of the 14 standards under Rule 1014. These members would therefore incur costs in addition to the costs to seek a materiality consultation. This includes the fees associated with a CMA, time of firm staff, and submission of additional documentation. The filing of a CMA would also cause an additional delay to effectuate the contemplated expansion or transaction. This may cause member firms, associated persons and the customers of member firms to lose the benefits associated with the business opportunities. A determination that a CMA must be filed, however, would indicate that the risks to claimants, and therefore the potential benefits of a closer examination, are high. An examination may include the regulatory history of a member to determine whether it is able to satisfy any pending arbitration claims should they go to award, as well as the adequacy of any supervisory plan for an individual with a pending arbitration claim that the firm is contemplating hiring.[43] If the actual risks to claimants are low (*e.g.,* the amount settled or eventually awarded is a small percentage of the amount claimed), then the greater costs to member firms to file a CMA would not also result in a similar increase in customer protections.

The proposed amendments are not designed to impose disproportionate costs based on firm size. Instead, the costs the proposed amendments would impose are dependent on the compensatory loss amounts of pending customer arbitration claims, or the presence of an unpaid arbitration award or an unpaid settlement related to an arbitration, and the financial capacity of the member firm. In addition, the costs member firms may incur to seek a materiality consultation (and potentially file a CMA) as a result of the proposed amendments, including any burden on competition, are borne at their discretion, in their decision to hire or acquire or transfer the member's assets. Member firms would incur the additional costs if they choose to hire an associated person involved in sales who has a covered pending arbitration claim, or where the transferring member or an associated person of the transferring member has a covered pending arbitration claim.

The member firms that would be required to seek a materiality consultation (and potentially file a CMA) as a result of the proposed amendments may range in size.[44] For example, as described in the Economic Baseline, FINRA identified four member firms that filed a CMA relating to the hiring of an associated person with a covered pending arbitration claim. All four member firms were small.[45] Similarly, FINRA identified 25 CMAs as relating to the asset acquisitions or transfers of 26 member firms where the transferring members had covered pending customer arbitration claims. Among the 26 transferring members, 13 members were small, nine members

[41] *See supra* note 22.

[42] *See* the discussion in the Economic Baseline. Customers may have an incentive to file an arbitration claim for the sole purpose of disrupting a contemplated transaction. This incentive could increase the number of member firms that would be required to seek a materiality consultation and potentially file a CMA and incur the associated costs. FINRA has no reasonable basis on which to predict the frequency of this occurring if the proposed amendments are adopted. SIFMA suggested that the definition of a covered pending arbitration claim should be limited to claims filed prior to the public announcement of the contemplated transaction. FINRA would review customer claims as part of a materiality consultation and consider the facts and circumstances of the case as well as its timing. The potential disruption to contemplated transactions from these claims, therefore, is expected to be limited.

[43] Individuals with pending arbitration claims may engage in future potential misconduct that could result in additional arbitration claims, including claims that name the hiring member. *See supra* note 22.

[44] The definition of firm size is based on Article I of the FINRA By-Laws. A firm is defined as ''small'' if it has at least one and no more than 150 registered persons, ''mid-size'' if it has at least 151 and no more than 499 registered persons, and ''large'' if it has 500 or more registered persons.

[45] During the sample period and among all member firms, FINRA also identified 186 associated persons who were hired with a covered pending arbitration claim at the time of the hiring. *See supra* note 37. The percentage of small member firms that hired the 186 associated persons (90 percent) is similar to the proportion of small member firms industry-wide as of year-end 2017 (90 percent). *See* 2018 FINRA Industry Snapshot, *https://www.finra.org/sites/default/files/2018_finra_industry_snapshot.pdf.*

were mid-size, and four members were large.[46]

An associated person, as a respondent to a pending claim, may also incur costs as a result of the proposed amendments. New member applicants and existing member firms may be less likely to hire associated persons with a pending claim in order to avoid the costs associated with the proposed amendments. An associated person, as a respondent to a pending claim, may therefore experience fewer career opportunities within the brokerage industry.

C. Other Proposed Amendments

Two other proposed amendments would have additional economic effects. First, the proposed amendments would require applicants to provide prompt notification of a pending arbitration claim that is filed, awarded, settled, or becomes unpaid before a decision on the application is served. These notifications would further improve the ability of FINRA to oversee and review the pending arbitrations of applicants to ensure that arbitration awards and settlements are paid in full in accordance with their terms. Applicants that provide notification would incur additional costs including the time of firm staff and the expense to submit additional documentation.

A number of the applicants for new membership or member firms that filed a CMA during the sample period would have been required to promptly notify FINRA of changes to pending arbitration claims. FINRA identified 13 of the 317 NMAs (or four percent) from January 2015 through December 2017 as having changes in the status of a pending arbitration claim involving the applicant or its associated persons before a decision constituting final action was served on the applicant (or the application was otherwise withdrawn),[47] and 156 of the 1,051 CMAs (or 15 percent) as also having similar changes to the status of a pending arbitration claim.[48]

Second, the proposed amendments would clarify the manner in which an applicant may demonstrate its ability to satisfy pending arbitration claims or unpaid arbitration awards or settlements. The clarification would improve the efficiency of the MAP process by increasing the ability of applicants to anticipate the information necessary to demonstrate their ability to satisfy outstanding obligations, and reduce the need for applicants to submit additional information after the initial filing.

5. Alternatives Considered

FINRA considered a range of suggestions in developing the proposed amendments as set forth in *Regulatory Notice* 18–06. The proposed amendments reflect the changes that FINRA believes at this time to be the most appropriate for the reasons discussed herein.

An alternative to the proposed amendments includes a rebuttable presumption of denial for a CMA if the applicant or its associated persons are the subject of a pending arbitration claim. This alternative would increase the costs to member firms that file a CMA, including member firms that initially sought a materiality consultation under the proposed amendments. Member firms may incur costs to demonstrate their ability to satisfy the claims. This includes the opportunity costs associated with setting aside funds that may otherwise be used for other business opportunities.

A presumption of denial would reduce the risks associated with firms avoiding the payment of claims should they go to award. As part of a materiality consultation, however, FINRA would examine the regulatory history of a member firm to determine whether it is able to satisfy pending arbitration claims should they go to award, as well as the adequacy of any supervisory plan for an individual with a pending arbitration claim that the firm is contemplating hiring.[49] The additional protections from extending a presumption of denial for pending arbitration claims to CMAs, therefore, may not justify the additional costs to member firms.[50]

Other alternatives to the proposed amendments include expanding or narrowing the conditions for member firms to seek a materiality consultation or file a CMA.[51] Expanding (narrowing) the requirements for member firms to seek a materiality consultation or to file a CMA may decrease (increase) the ability of firms to avoid satisfying their outstanding obligations by transferring their assets to another firm. By expanding (narrowing) the requirements, however, additional (fewer) member firms would incur the associated costs. FINRA believes that the requirements under the proposed amendments for member firms to seek a materiality consultation provide for the additional investor protections but minimize the costs when the risk of members not satisfying their outstanding obligations is low.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in *Regulatory Notice* 18–06 (February 2018) (''*Notice*''). FINRA received nine comment letters in response to the

[46] As a result of the safe harbor provision, the member firms that would have been subject to the proposed amendments during the sample period may be different than the member firms that filed a CMA. The number and composition of member firms that would have been required to file a materiality consultation under the proposed rule change is therefore not known.

[47] The arbitration claims consisted of 11 customer claims and one intra-industry claim. Among the 11 customer claims, three resulted in a settlement, three closed by hearing, four were withdrawn, and one remained open. The total amount of compensatory damages sought by customers was $5.8 million (including the cases closed by settlement). In the cases closed by hearing, the customers were awarded compensatory damages of approximately $146,000. None of the awarded damages went unpaid.

[48] The arbitration claims consisted of 913 customer claims of which 497 resulted in a settlement, 184 closed by hearing or on the papers, 174 were closed by other means including 95 that were withdrawn, and 58 remained open. The total amount of compensatory damages sought by customers was $856.0 million. In the cases closed by hearing or on the papers, the customer was awarded compensatory damages of approximately $20.5 million. Two of the customer cases resulted in an award that went unpaid. One of the cases is referred to above in the discussion in the Economic Baseline. The other case relates to two associated persons who left the applicant before a decision constituting final action was served. The amount of the awarded damages that went unpaid is approximately $70,000. The associated persons who failed to pay the awarded damages have been suspended or barred by FINRA. The CMA was approved with restrictions. For applicants with changes to a pending arbitration claim before a decision constituting final action was served (or the application was otherwise withdrawn), the median number of changes is two.

[49] *See supra* note 22.

[50] Several commenters suggested alternatives to the proposed amendments that would require a presumption of denial when pending arbitration claims exceed certain thresholds. *See* GSU, PIABA, and UNLV. Although member firms with pending arbitration claims that exceed the thresholds may be at higher risk of nonpayment, FINRA believes that it would still be able to adequately assess these firms' ability to pay the claims should they go to award without the presumption of denial.

[51] For example, commenters suggested expanding the requirement to seek materiality consultations for business expansions. Suggestions include omitting the qualifying term ''involved in sales'' (NASAA) and expanding to principals, control persons, or officers (GSU). Another commenter, however, suggested excluding business expansions from the requirement to seek a materiality consultation if the expansion is in connection with another corporate event such as a merger, acquisition, or asset transfer (FSI). Commenters also suggested narrowing the requirement to seek materiality consultations for asset acquisitions or transfers. Suggestions include permitting smaller acquisitions or transfers to proceed without a materiality consultation (GSU) or excluding covered pending arbitration claims altogether (FSI).

Notice. A copy of the *Notice* is attached as Exhibit [sic] 2a. A list of the comment letters received in response to the *Notice* is attached as Exhibit [sic] 2b.[52] Copies of the comment letters received in response to the *Notice* are attached as Exhibit [sic] 2c.

Eight commenters supported the proposal as set forth in the *Notice* either absolutely or with some qualifications.[53] One commenter raised concerns outside the scope of the *Notice.*[54] A summary of the comments and FINRA's responses are discussed below.[55]

1. Rebuttable Presumption to Deny an NMA

FINRA is proposing to amend Standard 3 to create a rebuttable presumption to deny an NMA where the applicant or its associated person is subject to a pending arbitration claim. Three commenters expressly supported the proposed amendment.[56] No commenters opposed this proposed amendment.

2. Rebuttable Presumption to Deny a CMA

In the *Notice,* FINRA requested comment on whether the presumption of denial in connection with a pending arbitration claim should be applied to a CMA as well. Six commenters responded with three expressing opposition to this approach.[57] In general, these three commenters noted that a CMA already requires an applicant to provide information pertaining to pending arbitration claims and how an applicant will handle the arbitrations and the awards that may result. NASAA further expressed the belief that creating a presumption to deny a CMA may disincentivize a firm from taking on potential liability through an acquisition, which could result in more unpaid arbitration awards.

The other three commenters supported extending the presumption to deny an application with pending arbitration claims to a CMA but recommended various conditions on when the presumption should apply.[58]

GSU recommended that the presumption to deny a CMA should be triggered when the applicant or its associated person has a pending arbitration claim or unpaid settlement for an amount exceeding $15,000, contending that such dollar limit would provide some balance to the proposed rule change by tying the presumption to CMAs with claims that are required to be reported to FINRA. PIABA recommended that two preconditions for the presumption to deny a CMA should apply—one for the associated person and the other for the member firm. With respect to the associated person, PIABA stated that the presumption to deny a CMA should be triggered when more than five claims are pending against any control person, principal, registered representative, or other associated person of the member, as such number of claims may signal problems within the member and may be an indicator of potential future investor harm. If the member can overcome the presumptive denial of a CMA, and it still desires to hire or continue the employment of individuals with five or more pending arbitration claims, PIABA recommended that those individuals with such claims pending against them should be subject to heightened supervision and not be permitted to serve in a supervisory capacity until all pending arbitration claims against them have in fact been resolved, and the corresponding awards or settlements, if any, have been paid in full. PIABA further stated that following the conclusion of such proceedings, the decision related to an individual's supervision or supervisory capacity should rest with the member, and recommended that FINRA's rules should be modified to ensure that such individual is not permitted to move from one firm to another without regard to problems that occurred at the former firm.

As for the member firm, PIABA stated that the presumption should be applied based upon the aggregate amount of damages pleaded in all pending arbitration claims, taking the nature and quality of those claims into account, compared to the value of cash assets and insurance held by the member firm. If this ratio indicates a substantial risk of insolvency or presents the inability to pay all pending legitimate claims in full, then the presumption should apply. PIABA further stated that FINRA should be permitted to look beyond the damages described in a statement of claim, and discuss the issues related to damages directly with investors, their representative and FINRA members and their counsel, in confidential sessions, prior to applying a presumptive CMA denial. UNLV recommended that the presumption apply to a CMA where there is a covered pending arbitration claim.

The existence of a specified regulatory history currently enumerated under Standard 3 that triggers the presumption to deny an application is intended to encourage compliance with unpaid arbitration awards, other unpaid adjudicated customer awards and unpaid arbitration settlements, and their existence raise the question of an applicant's capacity to comply with applicable securities laws and regulations, and with applicable FINRA rules.[59] Standard 3, as proposed, would not diminish FINRA's ability to assess whether the applicant and its associated persons are able to meet this standard. FINRA would continue to consider an applicant's or its associated person's pending arbitration claims, among other regulatory history, in determining whether an applicant for continuing membership is ''capable of complying with'' the federal securities laws and FINRA rules. Accordingly, while FINRA appreciates the commenters' recommendations, FINRA has determined, at this time, not to apply the presumption of denial for pending arbitration claims to a CMA.

3. Evidence of Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements, or Pending Arbitration Claims

A. Types of Evidence

Proposed IM–1014–1 would provide that an applicant may demonstrate, in a variety of ways, that it has the financial resources to satisfy an unpaid arbitration award, other adjudicated customer award, unpaid arbitration settlement, or a pending arbitration claim. Some examples include an escrow agreement, insurance coverage, a clearing deposit, a guarantee, a reserve fund, or the retention of proceeds from an asset transfer.

With the exception of SIFMA, none of the commenters expressed views on the types of documentation an applicant may present to evidence the ability to satisfy an award, settlement or claim. SIFMA expressed concern about proposed IM–1014–1 requiring an

[52] All references to commenters are to the comment letters as listed in Exhibit [sic] 2b.

[53] *See* Colorado, Cornell, GSU, FSI, NASAA, PIABA, SIFMA, and UNLV.

[54] *See* IBN.

[55] Comments that speak to the economic impacts of the proposed rule change are addressed in Item B above.

[56] *See* SIFMA, Cornell, and GSU.

[57] *See* Cornell, NASAA, and SIFMA.

[58] *See* GSU, PIABA, and UNLV.

[59] *See* Rule 1014(a)(3)(C) (providing, in part, that a presumption of denial applies if the applicant, its control persons, principals, registered representatives, other associated persons, any lender of five percent or more of the applicant's net capital, and any other member with respect to which these persons were a control person or a five percent lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards or unpaid arbitration settlements).

applicant to show proof of insurance coverage, asserting that having insurance coverage does not necessarily correspond to having the ability to pay the award, settlement or claim. FINRA notes that the supporting documentation listed in the proposed interpretive material are examples of what an applicant may produce to FINRA to evidence the ability to satisfy the award, settlement or claim, and is not intended to be an exhaustive list by which a member can show its financial resources.[60]

B. Guarantee

In the *Notice,* FINRA requested comment on whether an applicant, if it designates a clearing deposit or the proceeds from an asset transfer for purposes of showing the ability to satisfy a pending arbitration claim, should be required to provide some form of guarantee that such funds will be used to satisfy the award, settlement or claim. Three commenters expressed their general support for a guarantee,[61] with two of these commenters making additional recommendations.[62]

Emphasizing the need to secure funds or to prevent them from being depleted for other purposes, PIABA recommended that applicants hold the funds in an escrow account with clear instructions to the third party escrow agent (unaffiliated with the member firm) to disburse the funds under specified circumstances.[63] PIABA also suggested strict penalties in the event of a breach of that guarantee, such as the immediate suspension of a member's broker-dealer license. NASAA noted that circumstances sometimes change during the pendency of a planned business transaction and that an applicant may need to reallocate the prior designated funds. To account for potentially changing business circumstances and given the fungibility of money, NASAA stated that an applicant should not be duty bound to satisfy an arbitration award or settlement from the funds they may have initially identified. Instead, FINRA's rules should allow an applicant the flexibility to amend its application and designate a different source of available funds to satisfy pending claims or unpaid arbitration awards or settlements if necessary.

In light of the comments received, FINRA has modified proposed IM–1014–1 to provide that to overcome the presumption to deny the application, the applicant must guarantee that any funds used to evidence the applicant's ability to satisfy any awards, settlements, or claims, will be used for that purpose. As proposed, IM–1014–1 would not preclude an applicant from designating a different source of funds to satisfy an award, settlement or claim, provided the source of funds is acceptable to FINRA. Moreover, Section 1(c) of Article IV of the FINRA By-Laws already requires an applicant to keep its application current by submitting supplementary amendments as necessary.[64] A change in source of available funds to satisfy pending arbitration claims or unpaid arbitration awards or settlements would require the application to be updated in accordance with the FINRA By-Laws.

C. Valuation of Claim Through Independent Legal Counsel

Proposed IM–1014–1 would also permit an applicant to provide a written opinion of an independent, reputable U.S. licensed counsel knowledgeable as to the value of the arbitration claim in an effort to lend support to the applicant's ability to demonstrate that it has the financial resources to satisfy the claim, award or settlement. Two commenters suggested that the proposed provision should not require that counsel be ''independent.'' [65] FSI stated that a firm should be able to rely on the opinion of in-house counsel as such counsel would be more familiar with the firm and its risk profile, adding that obtaining an opinion from external legal counsel could be costly and would not increase the regulatory value of the opinion offered. NASAA stated that it did not believe that the expert opinion necessarily needed to be from an ''independent'' source and instead, FINRA should have the authority to assess the veracity and reasonableness of an offered expert opinion on a case-by-case basis and to require such qualifications and degree of independence from the applicant as FINRA reasonably believes warranted in each instance. In addition, NASAA recommended that proposed IM–1014–1 should compel an applicant to obtain a written opinion of a legal or financial expert to support the applicant's assertion that it can satisfy an unpaid award or settlement obligation it intends to assume, rather than giving the applicant the discretion to provide such opinion.

FINRA believes that it would be appropriate and consistent with current FINRA Rules to provide a member with the option to derive support for the valuation of an arbitration claim through a legal opinion from an independent, reputable U.S. licensed counsel knowledgeable as to the value of such arbitration claim.[66]

4. Materiality Consultations

A. The Process

Proposed IM–1011–2 and proposed Rule 1017(a)(6) would require a member to seek a materiality consultation under specified circumstances. FSI, while not expressly opposed to the underlying concept of mandating materiality consultations, stated that the proposed rules do not set forth clear parameters around the process, such as the time in which FINRA must issue a decision and the remedy a member firm has if it does not agree with FINRA's decision on the materiality consultation. FINRA notes that the materiality consultation process is well established, and a description of the process and the information that should be included in a request for a materiality consultation, among other information, is detailed on *FINRA.org.*[67] In addition, FINRA notes that if this proposed rule change is approved by the Commission, FINRA will update the materiality consultation process as detailed on its website as necessary.

B. Mandatory Materiality Consultation for Business Expansion To Add One or More Associated Persons Involved in Sales With Covered Pending Arbitration Claims

As set forth in the *Notice,* proposed IM–1011–2 would require a member to seek a materiality consultation before effecting a business expansion that would involve adding one or more associated persons involved in sales with a covered pending arbitration claim, unpaid arbitration award, or unpaid settlement related to an

[60] FINRA notes that similar examples appear in other FINRA rules. *See, e.g.,* Section 4(i)(3) of Schedule A to the FINRA By-Laws (describing the circumstances under which a CMA for an acquisition or transfer of 25 percent or more of the member's assets may qualify for a fee waiver where the applicant can demonstrate in the CMA the ability to satisfy in full any unpaid customer-related claim (*e.g.,* sufficient capital or escrow funds, proof of adequate insurance for customer related claims)). Form CMA also includes various examples. *See supra* note 12.

[61] *See* NASAA, PIABA, and UNLV.

[62] *See* NASAA and PIABA.

[63] PIABA's other recommendation was to have the guarantee secured by a lien in favor of FINRA or the investor.

[64] *See* Section 1(c) of Article IV of the FINRA By-Laws.

[65] *See* FSI and NASAA.

[66] *See, e.g.,* FINRA Rule 2040 (Payments to Unregistered Persons) (providing in supplementary material that a member, if uncertain about whether an unregistered person may be required to be registered under SEA Section 15(a), can derive support from the member's determination by, among other things, a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area).

[67] *See supra* note 14 and accompanying text.

arbitration.[68] Thus, a member would not be permitted to effect the contemplated business expansion until FINRA determined whether or not a CMA would be required for such contemplated business expansion.

Four commenters expressed support for this proposed requirement,[69] with some commenters suggesting modifications. For example, NASAA recommended omitting the qualifying term ''involved in sales'' so that the proposed rule would apply to any associated person, irrespective of the nature of his or her employment at the member firm, who is subject to a claim, award or settlement, explaining that firms may assign an associated person with pending claims or unpaid awards to administrative, non-sales roles in order to circumvent a materiality consultation. GSU suggested that proposed IM–1011–2 should be expanded to apply to principals, control persons or officers as occasionally, associated persons from problematic firms may move on to become officers at larger firms.[70] If a materiality consultation results in the requirement to file a CMA, Cornell recommended that proposed IM–1011–2 should require the member to file the CMA within a specified timeframe (*e.g.,* 30 days after FINRA's finding of materiality).[71]

FSI raised a concern that proposed IM–1011–2 could require a member to undergo a materiality consultation to add a single registered person with a pending arbitration claim. FSI recommended that proposed IM–1011–2 should exclude such a business expansion when adding associated persons involved in sales to a member's roster if done in connection with another corporate event such as a merger, acquisition, asset transfer or some other business expansion. FSI also recommended that the proposed rule exclude pending arbitration claims, explaining that a member should not be potentially compelled to undergo an application review process so that FINRA can assess the member's decision to hire one registered person with a pending arbitration claim, particularly when the claim is unsubstantiated. FSI noted that the proposed provision would have a negative impact on a member's recruiting efforts by overreaching into a member's routine hiring decisions.

As noted above, proposed IM–1011–2 is intended to address situations in which a member wants to hire an associated person who engages in sales with the public and has a covered pending arbitration claim, unpaid arbitration award, or unpaid settlement related to an arbitration and, therefore, may have a history of noncompliance. In the *Notice,* proposed IM–1011–2 also included a description of the possible outcomes of FINRA's determination on a materiality consultation; that is, either a member firm would not be required to file a CMA in accordance with Rule 1017 and may effect the contemplated business expansion or the member must file a CMA in accordance with Rule 1017 and would not be permitted to effect the contemplated business expansion without FINRA's approval of the CMA.

For clarity, FINRA has modified the language in proposed IM–1011–2 in two ways. First, proposed IM–1011–2 expressly states that the safe harbor for business expansions in IM–1011–1 is not available if a member firm is seeking to add one or more associated persons involved in sales with a covered pending arbitration claim (as defined in proposed Rule 1011(c)(1)), unpaid arbitration award, or unpaid settlement related to an arbitration. Second, proposed IM–1011–2, as modified, directs member firms to proposed Rule 1017(a)(6)(B) under which the description of the possible outcomes of FINRA's determination on a materiality consultation now resides. Proposed IM–1011–2, as modified, and proposed Rule 1017(a)(6)(B) are intended to clarify that a member firm, before it considers hiring one or more associated persons involved in sales with a covered pending arbitration claim (as defined in proposed Rule 1011(c)(1)), unpaid arbitration award, or unpaid settlement related to an arbitration, must first seek a materiality consultation from FINRA.

Requiring a materiality consultation in this situation would give FINRA the opportunity to assess, among other things, the adequacy of any supervisory plan the member firm has in place for the individual, and to discuss with the member firm the potential impact on its finances if the member firm hires the individual and the individual engages in future potential misconduct while employed at the member firm that results in an arbitration claim against the member firm. FINRA notes that, in general, materiality consultations are not lengthy processes, taking on average 12 days.

In addition, FINRA notes that with respect to pending arbitration claims, a materiality consultation would only be required if those claims individually or in the aggregate are substantial, *i.e.,* exceed the hiring firm's excess net capital. As described above, mandating a materiality consultation where a member is seeking to increase the number of associated persons involved in sales with covered pending arbitration claims, unpaid arbitration awards or unpaid settlements is to provide FINRA the opportunity to assess the relevant facts and circumstances of hiring such individuals and the impact, if any, on the member's supervisory and compliance structure, among other considerations.

C. Mandatory Materiality Consultation for Any Acquisition or Transfer of Member's Assets (Proposed Rule 1017(a)(6)(A))

Proposed Rule 1017(a)(6)(A) would require a member to seek a materiality consultation before effecting any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an associated person of the transferring member has a covered pending arbitration claim, unpaid arbitration award, or unpaid settlement related to an arbitration.[72] The proposed rule would require a member to wait for FINRA's determination on whether or not a CMA would be required for the contemplated acquisition or transfer.

Several commenters supported proposed Rule 1017(a)(6)(A) either unequivocally or with a minor qualification.[73] GSU expressed its support for the proposed provision insofar as it would prevent a member from acquiring or transferring a large amount of assets without first undergoing a materiality consultation in situations involving covered pending arbitration claims, unpaid arbitration awards or settlements, but recommended that smaller acquisitions or transfers involving such claims, awards or settlements should be

[68] FINRA notes that the term, ''associated person involved in sales'' as used in proposed IM–1011–2 and proposed Rule 1017(a)(6)(B) is derived from the safe harbor provision under IM–1011–1.

[69] *See* SIFMA, NASAA, GSU, and Cornell.

[70] FINRA notes that the proposed amendments relating to requiring a materiality consultation for asset acquisitions or transfers would apply to principals, control persons or officers with covered pending arbitration claims, unpaid arbitration awards, or unpaid arbitration settlements moving between firms.

[71] FINRA does not believe that it is necessary to require the applicant to file the CMA within a specified time period because if a CMA is required, the applicant would not be able to effect the transaction without FINRA's approval of the CMA and, therefore, FINRA believes the applicant would be incentivized to file the CMA for approval as soon as possible.

[72] In the *Notice,* this provision previously appeared as proposed paragraph (a)(4) in Rule 1017. The proposed rule change would renumber this provision as paragraph (a)(6)(A) in Rule 1017.

[73] *See, e.g.,* Cornell, GSU, NASAA, and SIFMA.

permitted to proceed without a materiality consultation or CMA. Specifically, GSU recommended that FINRA should set a threshold of 10 percent, explaining that this threshold would allow the ''occasional transfer'' of customer accounts from one firm to another, but not allow an associated person to move a ''meaningful percentage of his accounts to another firm.''

FSI stated that proposed Rule 1017(a)(6)(A) should exclude covered pending arbitration claims, noting that asset transfers that do not require a CMA under the current MAP rules should not be required to undergo a materiality consultation solely because the member or its associated person has a pending arbitration claim. FSI stated that proposed Rule 1017(a)(6)(A) could be interpreted as requiring a member that transfers any asset, no matter how immaterial, to undergo a materiality consultation and then potentially, a CMA, where the member or any of its associated persons may be subject to unsubstantiated, pending, investor arbitration claims.

While FINRA appreciates the commenters' recommendation and concerns, FINRA has determined not to modify the proposal. As noted above, FINRA believes that the definition of a covered pending arbitration claim is sufficiently narrowly tailored to limit the extent to which a member would have to seek a materiality consultation, but would also capture those transactions that could result in investors not being paid should the claims go to award.

In the *Notice,* FINRA requested comment on whether proposed Rule 1017(a)(6)(A) should be limited to asset acquisitions or transfers involving a principal, control person or officer who has a covered pending arbitration claim, unpaid arbitration award, or unpaid arbitration settlement. Two commenters responded, opposing such limitation because it may provide an opportunity for circumvention.[74] NASAA stated that narrowing the scope of the proposed provision could allow a member to make staffing changes by temporarily shifting its principals, control persons or officers into administrative or other positions that fall outside the proposed provision. PIABA stated that a member's solvency may be jeopardized by an associated person who is not a principal, control person or officer, but who may be engaged in selling away activities or ''running a large scheme'' without the member's knowledge.

FINRA has determined not to limit proposed Rule 1017(a)(6)(A) to asset acquisitions or transfers involving principals, control persons or officers. FINRA believes that to help further address the issue of unpaid arbitration awards, the proposal should apply more broadly.

D. Definition of ''Covered Pending Arbitration Claim''

The *Notice* defined the term ''covered pending arbitration claim'' for business expansions, and asset acquisitions and transfers as: (1) An investment-related, consumer-initiated claim filed against the associated person (for business expansions), or filed against the transferring member or its associated persons (for asset acquisitions and transfers) that is unresolved; and (2) whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the member's excess net capital. Under both circumstances, the definition provided that such claim amount would include only claimed compensatory loss amounts, not requests for pain and suffering, punitive damages or attorney's fees.

Two commenters discussed this definition.[75] FSI stated that the nexus between an associated person's pending arbitration claim and a firm's excess net capital is unclear as the firm at which the misconduct occurred would be the one to cover the claim, not the firm that is obligated to file the materiality consultation. NASAA recommended that the definition should expressly state that it includes all investment-related arbitration claims filed in any arbitration forum (*e.g.,* FINRA arbitration forum, a private alternative dispute resolution forum) or judicial (state or federal) forum). In addition, NASAA stated that the ''claim amount'' was unclear as to its treatment of pending claims for which there may be joint liability between more than one person or for which an associated person reasonably expects to be indemnified, explaining that pending claims with joint liability should be assessed to each respondent maximally, as if no other person could be potentially liable.

In response to comments, FINRA has modified the definition to clarify that a covered pending arbitration claim would include those filed in any arbitration forum, and that a pending claim with joint liability would be assessed to each respondent, as if no other person could be potentially liable. In addition, FINRA emphasizes that the definition would be applied only for purposes of determining whether a materiality consultation would be required or not. The term is not intended to speak to whether the member would be responsible for satisfying the covered pending arbitration claim.

In the *Notice,* FINRA requested comment on whether the definition of ''covered pending arbitration claim'' should be limited to claims filed prior to a specified time period or event such as a public announcement of the contemplated transaction. Two commenters addressed this question.[76] SIFMA stated that the definition should include only those pending arbitration claims filed prior to public announcement of the contemplated transaction. PIABA stated that the definition should be broad and not be limited to claims filed prior to a specific date, but if a date is specified, then FINRA should require that any funds received in consideration for the transaction be frozen or subject to a lien in favor of the investor, pending the resolution of all pending arbitration claims filed within a certain period following the transaction closing.

FINRA has determined not to limit the proposed definition to only those claims filed prior to a specified date. At this time, FINRA believes that the definition of a covered pending arbitration claim is sufficiently narrowly tailored without adding a time limitation relating to when the arbitration claims are filed.

5. Written Notification of Any Pending Arbitration Claim That Is Filed, Awarded, Settled or Becomes Unpaid Before Final Action Is Served on Applicant

FINRA is proposing to add a new provision to the application review process to require an applicant to provide prompt notification, in writing, of any pending arbitration claim that is filed, awarded, settled or becomes unpaid before a decision constituting final action of FINRA is served on the applicant. Two commenters expressed their views on proposed Rules 1013(c) and 1017(h).[77]

Cornell noted that the proposed provisions would enhance FINRA's ability to monitor when pending arbitration claims are filed or when awards become unpaid during the application review process. NASAA recommended moving the language from proposed Rule 1013(c) to Rule 1013(a)(1)(H), which currently provides that an NMA must include

[74] *See* NASAA and PIABA.

[75] *See* FSI and NASAA.

[76] *See* PIABA and SIFMA.

[77] *See* Cornell and NASAA.

documentation of disciplinary history and certain regulatory, civil, and criminal actions, arbitrations, and customer complaints for the applicant and its associated persons, unless such history has been reported to the Central Registration Depository (CRD®). At this time, FINRA intends to retain the language as a standalone provision under proposed Rule 1013(c) to maintain clear parity with the language appearing under proposed Rule 1017(h). However, FINRA will consider NASAA's recommendation in connection with its separate proposal to substantially restructure the MAP rules.[78]

6. Other Comments

UNLV recommended that FINRA consider proposing a rule to protect investors when FINRA members try to convert themselves into another area of the securities industry while facing covered pending arbitration claims or outstanding unpaid arbitration awards. IBN expressed the view that ''[a]rbitration has nothing to do with the law it is about feelings[,]'' suggesting that there needs to be two sets of rulebooks, one for small firms and the other for large firms. While FINRA acknowledges the commenters' concerns, their recommendations are beyond the scope of this proposed rulemaking and, therefore, FINRA has not addressed them here.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2019–030 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2019–28021 Filed 12–27–19; 8:45 am]

BILLING CODE 8011–01–P

[78] *See Notice* 18–23.

[79] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 1.88 percent for the January–March quarter of FY 2020.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2019–28188 Filed 12–27–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10986]

30 Day Notice of Proposed Information Collection: Adoptive Family Relief Act Refund Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to January 29, 2020.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection

title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Jorge Abudei, who may be reached at 202–485–8915 or at *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Adoptive Family Relief Act Refund Application.

• *OMB Control Number:* 1405–0223.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* CA/C.

• *Form Number:* DS–7781.

• *Respondents:* Immigrant Visa Petitioners.

• *Estimated Number of Respondents:* 20.

• *Estimated Number of Responses:* 20.

• *Average Time Per Response:* 5 Minutes.

• *Total Estimated Burden Time:* 1.6 Hours.

• *Frequency:* On Occasion.

• *Obligation to respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Adoptive Family Relief Act (Pub. L. 114–70) amended Section 221(c) of the Immigration and Nationality Act (INA), 8 U.S.C. 1201(c), to allow for the waiver or refund certain immigrant visa fees for a lawfully adopted child, or a child coming to the United States to be adopted by a United States citizen, subject to criteria prescribed by the Secretary of State. Over 350 American families have successfully adopted children from the Democratic Republic of the Congo. However, since September 25, 2013, they have not been able to bring their adoptive children home to the United States because the Democratic Republic of the Congo suspended the issuance of ''exit permits'' for these children. As the permit suspension drags on, however, American families are repeatedly paying visa renewal and related fees, while also continuing to be separated from their adopted children.

The waiver or refund provides support and relief to American families seeking to bring their adoptive children home to the United States from the Democratic Republic of the Congo and families in situations similar to the one stipulated above. This form collects information to determine the extra fees these families have paid and refund them in accordance with the Adoptive Family Relief Act.

Methodology

The collection will be hosted on the Department of State website to be printed, filled out, and eventually sent to the consular section where the adoption case was originally processed.

Douglass R. Benning,

Deputy Assistant Secretary.

[FR Doc. 2019–28017 Filed 12–27–19; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0024]

Request for Comments Concerning the Extension of Particular Exclusions Granted Under the March 2019 Product Exclusion Notice From the $34 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated the exclusion process in July 2018 and granted multiple sets of exclusions. The second set of exclusions was granted in March 2019, and are scheduled to expire on March 25, 2020. The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted in March 2019. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES: January 15, 2020 at 12:01 a.m. ET: The docket (USTR–2019–0024) will open for submitting comments on the possible extension of particular exclusions.

February 15, 2020 at 11:59 p.m. ET: To be assured of consideration, submit written comments by February 15, 2020.

ADDRESSES: Submit public comments through the Federal eRulemaking Portal: *https://www.regulations.gov.* The docket number is USTR–2019–0024. USTR strongly encourages all commenters to use Form A in submitting comments. If applicable, Form B (which requests Business Confidential Information (BCI)), along with a copy of the corresponding Form A, must be submitted via email at *301bcisubmissions@ustr.eop.gov.* See the submission instructions below.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact USTR Assistant General Counsels Philip Butler or Benjamin Allen at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), and 84 FR 45821 (August 30, 2019).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders can request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion

action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. The U.S. Trade Representative granted multiple sets of exclusions. The second set of exclusions was granted in March 2019, and are scheduled to expire on March 25, 2020. *See* 84 FR 11152 (March 25, 2019) (March 2019 notice).

B. Possible Extensions of Particular Product Exclusions

The U.S. Trade Representative has decided to consider a possible extension for up to 12 months of particular exclusions granted in the March 2019 notice. Accordingly, USTR invites public comments on whether to extend particular exclusions granted in the March 2019 notice. At this time, USTR is not considering comments concerning possible extensions of exclusions granted under any other product exclusion notice.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in July 2018, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

USTR strongly encourages that commenters complete Form A (which will be posted on USTR's website by the time the docket opens) and submit the completed Form A to *https://www.regulations.gov.* The docket number is USTR–2019–0024. USTR will post completed Form A's on the public docket.

In addition to submitting Form A, commenters who are importers and/or purchasers of the products covered by the exclusion also should complete Form B (which will be posted on USTR's website by the time the docket opens) and submit it, along with a copy of their completed Form A, via email at *301bcisubmissions@ustr.eop.gov.* Form A must be submitted via email with Form B and submitted as a single document (without Form B) to docket USTR–2019–0024 at *https://www.regulations.gov.*

Form B requests BCI information, and will not be posted on the public docket. To facilitate advance preparation of submissions, facsimiles of Forms A and B are annexed to this notice and will be available electronically at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/34-billion-trade-action.*

Set forth below is a summary of the information to be entered on Form A:

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the name of the third party organization, if applicable.
- The publication date of the **Federal Register** notice containing the exclusion on which you are commenting. Since USTR at this time only is considering exclusions granted by the March 2019 notice, this field must specify March 25, 2019.
- The full article description for the exclusion you are commenting on and the 10-digit code, as provided in the **Federal Register** notice granting the exclusion. Please indicate if the exclusion is a 10-digit HTSUS code (covering all products under a single 10-digit HTSUS number).
- Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.
- Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also is submitting a Form B with more detailed, confidential information.
- Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.
- Whether the commenter will be submitting Form B.

As indicated above, information submitted on Form B will not be publically available. Form B requires commenters who are importers and/or purchasers of the products covered by the exclusion to provide the following information:

- The efforts you have undertaken since July 2018 to source the product from the United States or third countries.
- The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019. Whether these purchases are from a related company, and if so, the name of and relationship to the related company.
- Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.
- The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018, and the first half of 2019.
- If applicable, the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019.
- Whether the Chinese-origin product of concern is sold as a final product or as an input.
- Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.
- Any additional information in support or in opposition of the extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

C. Submission Instructions

To be assured of consideration, you must submit your comment between the opening of the docket on January 15, 2020, and the February 15, 2020 submission deadline. By submitting a comment, you are certifying that the information provided is complete and correct to the best of your knowledge.

D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, USTR submitted a request to the Office of Management and Budget (OMB) for emergency review and clearance of this information collection request (ICR) titled *301 Exclusion Requests.* OMB assigned control number 0350–0015.

USTR issued notice and requested comments regarding its intent to seek

approval of a three-year extension of the control number for the information request on August 22, 2019 and November 1, 2019. 84 FR 43853, 84 FR 58802. OMB currently is reviewing USTR's submission for a three-year extension and has informed USTR that the control number is valid during the pendency of its review.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

OMB Control Number: 0350-0015 Expiration Date: January 31, 2020

OMB is reviewing USTR's submission for extension of the control number and has informed USTR that it is valid during the pendency of its review.

Exclusion Extension Comment Form A

Information in Form A should be submitted on the Public Docket at https://www.regulations.gov.

1. Submitter Information

Full Organization Legal Name **(Public)**

Commenter First Name **(Public)**

Commenter Last Name **(Public)**

Contact Email Address **(Public)**

Note: If you do not wish to provide a public email address, a private email address may be provided when you submit this form on Regulations.gov. Please check the box that reads "I want to provide my contact information" and enter your email address in the designated field.

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**

Third Party First Name **(Public)**

Third Party Last Name **(Public)**

2.

a) Please provide the publication date of the Federal Register notice containing the exclusion you are commenting on. (Public)

b) Please provide the 10-digit subheading of the HTSUS applicable to the exclusion you are commenting on. ***A 10-digit HTSUS number is required.*** **(Public)**

c) From the Federal Register notice, please provide the full article description for the exclusion. If the exclusion is a 10-digit code, please indicate. (Public)

d) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

3. Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale, even if you are also submitting a Form B with more detailed, confidential information.) (Public)

4. Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.) (Public)

5. Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.) (Public)

6. Will you be submitting Form B? (Public)

Note: Responses to Form A should be submitted to the Public Docket at Regulations.gov (Information submitted in Form A will be posted on the Public Docket).

OMB Control Number: 0350-0015 Expiration Date: January 31, 2020

OMB is reviewing USTR's submission for extension of the control number and has informed USTR that it is valid during the pendency of its review.

Exclusion Extension Comment
Form B

Form B should be completed by Importers and Purchasers of the products covered by the exclusion. Form B should be submitted via email at 301bcisubmissions@ustr.eop.gov and will not be available to the public. Please include Form A with your email submission of Form B.

NOTE: Form A should be submitted both on regulations.gov and with Form B, via email. Please include your Regulations.gov tracking number when submitting Form B.

1.

a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company? (BCI)

Please list the name and relationship of the related company. (BCI)

Name: **Relationship:**

b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

2. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

3. Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

4. Please discuss any efforts you have undertaken since July 2018 to source this product from United States or third countries. (BCI)

5. Please provide information regarding your company's gross revenue in USD for 2018, the first half of 2018, and the first half of 2019. (BCI)

2018 Gross Revenue:	
First Half (Jan-Jun) 2018:	
First Half (Jan-Jun) 2019:	
Are the provided figures estimates? (BCI)	

6. Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

7. Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

8. Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (BCI)

9. Please provide the Regulations.gov tracking number for your Form A submission (e.g. 1kx-xx-xxxx). (BCI)

[FR Doc. 2019–28088 Filed 12–27–19; 8:45 am]

BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Revised Notice of Intent To Prepare a Tier 1 Environmental Impact Statement: Brown County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is revising the March 11, 2008 Notice of Intent which advised the public that an Environmental Impact Statement (EIS) would be prepared for proposed transportation improvements in the southern part of the Green Bay metropolitan area in Brown County, Wisconsin. The FHWA will now

prepare a Tier 1 EIS to evaluate the proposed improvements.

FOR FURTHER INFORMATION CONTACT: Ian Chidister, Environmental Program Manager, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717, telephone: (608) 829–7503, email: *ian.chidister@dot.gov;* Bryan Lipke, P.E., Planning Project Manager, Wisconsin Department of Transportation, Northeast Region, 944 Vanderperren Way, Green Bay, WI 54304, telephone: (920) 492–5703, email: *Bryan.Lipke@dot.wi.gov;* Cole Runge, Principal Planner/MPO Director, Brown County Planning Commission/Green Bay MPO, 305 E. Walnut Street Room 320, PO Box 23600, Green Bay, WI 54305, telephone (920) 448–6480, email: *Cole.Runge@browncountywi.gov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT) and Brown County (the Lead Agencies), will prepare a Tier 1 EIS in accordance with 23 Code of Federal Regulations (CFR) 771.111(g) and 40 CFR 1502.20. The Lead Agencies previously issued a Notice of Intent on March 11, 2008, advising agencies and the public that an EIS would be prepared to study proposed transportation improvements to address existing and future transportation demand in the southern portion of the Green Bay metropolitan area.

Since the previous Notice of Intent was issued, the Lead Agencies developed a Draft Coordination Plan, Draft Impact Assessment Methodologies, draft purpose and need, and a preliminary range of alternatives. The Lead Agencies also convened two meetings with a Project Stakeholder Committee, held three public scoping/involvement meetings, and held meetings with participating and cooperating agencies to obtain concurrence for the purpose and need and the alternatives retained for detailed study. The Lead Agencies will coordinate with stakeholders, agencies, and the public to revisit and update documentation and decisions from previous EIS development efforts.

The proposed project will identify the most appropriate transportation improvements for addressing existing transportation demand and demand generated by the planned development in the southern part of the Green Bay metropolitan area. The study area includes the City of De Pere, the Villages of Allouez, Bellevue, Hobart, and Ashwaubenon, and the Towns of Glenmore, Ledgeview, Rockland, and Lawrence. The development that is planned to occur is projected to generate traffic which will strain the capacity of the area's existing transportation infrastructure. The project will study the traffic operations, capacity, and safety of the transportation infrastructure along with existing and planned development in the study area, system linkages, and local planning efforts.

A Tier 1 Draft EIS is anticipated for completion in summer 2020 with a combined Final EIS and Record of Decision (ROD) in fall 2020. Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and Native American Tribes. An agency scoping meeting and a public involvement meeting were held on December 11, 2019 with the appropriate agencies and the general public.

Public involvement is a critical component of the National Environmental Policy Act (NEPA) process, and it will be integrated with the process to develop the Tier 1 EIS. All environmental documents will be made available for review by federal and state resource agencies and the public. Specific efforts will be made to encourage involvement by, and solicit comments from minority and low-income populations in the project study area, with public involvement meetings held throughout the NEPA process. Public notice will be given regarding the time and place of public involvement meetings. A public hearing will be held after the completion of the Tier 1 Draft EIS. Project information will be posted on the Brown County website (*https://www.browncountywi.gov/departments/planning-and-land-services/planning/transportation/*). Inquiries about the project may be sent to the contacts listed above. To ensure the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties.

Projects receiving Federal funds must comply with Title VI of the Civil Rights Act and Executive Order 12898 ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this project. It is also Federal policy to identify and address any disproportionately high and adverse effects of Federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 CFR 771.123

Dated: December 20, 2019.

Ian Chidister,

Environmental Program Manager, FHWA, Madison, Wisconsin.

[FR Doc. 2019–28046 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before January 29, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2006–25854, Docket No. FMCSA–2013–0108, Docket No. FMCSA–2014–0382, Docket No. FMCSA–2015–0115, Docket No. FMCSA–2015–0116, Docket No. FMCSA–2015–0119, or Docket No. FMCSA–2017–0252 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

• *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2006–25854; FMCSA–2013–0108; FMCSA–2014–0382; FMCSA–2015–0115; FMCSA–2015–0116; FMCSA–2015–0119; FMCSA–2017–0252, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 11 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 11 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 11 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of December and are discussed below.

As of December 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

William Brown (NC)
Robert J. Forney (WI)
Curtis Alan Hartman (MD)
Wendell F. Headley (MO)
Marion Legg (MD)

The drivers were included in docket numbers FMCSA–2015–0115, FMCSA–2015–0116, and FMCSA–2015–0119. Their exemptions are applicable as of December 16, 2019, and will expire on December 16, 2021.

As of December 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Gary Freeman (WI)
Aaron Gillette (SD)
David Kestner (VA)
Chad Smith (MA)
Trever Williams (MN)

The drivers were included in docket number FMCSA–2006–25854, FMCSA–2013–0108, and FMCSA–2014–0382. Their exemptions are applicable as of December 23, 2019, and will expire on December 23, 2021.

As of December 28, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers: David Pamperin (WI).

This driver was included in docket number FMCSA–2017–0252. His exemption is applicable as of December 28, 2019, and will expire on December 28, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: December 20, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–28159 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0019]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before January 29, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0019 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0019.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0019), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0019*. Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0019* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637*.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

III. Qualifications of Applicants

Brian K. Boyd

Mr. Boyd, 56, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2019, his optometrist stated, ''In my medical opinion Mr. Boyd's condition is stable, non-deteriorating and has sufficient vision to

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf*.

perform the driving tasks required to operate a commercial vehicle.'' Mr. Boyd reported that he has driven straight trucks for two years, accumulating 21,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.98 million miles. He holds a Class AM CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Gary E. Collins

Mr. Collins, 59, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2019, his optometrist stated, ''In my medical opinion, Mr. Collins has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Collins reported that he has driven tractor-trailer combinations for 37 years, accumulating 2.4 million miles. He holds a Class AM CDL from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Anthony A. DeCarlo

Mr. DeCarlo, 58, has had a retinal vein occlusion in his right eye since 2015. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2019, his ophthalmologist stated, ''In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. DeCarlo reported that he has driven tractor-trailer combinations for 30 years, accumulating 1.9 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Darrel G. Jenkins

Mr. Jenkins, 61, has a prosthetic in his right eye due to a tumor in 2015. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his ophthalmologist stated, ''In my professional medical opinion, the patient is visually able to safely operate a commercial vehicle.'' Mr. Jenkins reported that he has driven tractor-trailer combinations for 41 years, accumulating 3 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Travis London

Mr. London, 43, has had optic neuropathy in his right eye since 2006. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, I feel there is no ocular contraindication to driving a commercial or recreational vehicle.'' Mr. London reported that he has driven straight trucks for six years, accumulating 30,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.13 million miles. He holds a Class A3 CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Vincent M. Najera

Mr. Najera, 62, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Mr. Najera has sufficient vision to perform the driving tasks required operate a commercial vehicle.'' Mr. Najera reported that he has driven straight trucks for 25 years, accumulating 375,000 miles, and tractor-trailer combinations for 25 years, accumulating 1.8 million miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jameson A. Otto

Mr. Otto, 44, has had optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his optometrist stated, ''I certify that he has sufficient vision to operate a commercial vehicle.'' Mr. Otto reported that he has driven straight trucks for one year, accumulating 18,000 miles, and tractor-trailer combinations for seven years, accumulating 672,000 miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Gerardo A. Padron

Mr. Padron, 39, has a corneal scar in his left eye due to an infection in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2019, his optometrist stated, ''In my opinion, Mr. Padron Portilla [sic] has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Padron reported that he has driven straight trucks for 13 years, accumulating 52,000 miles. He holds an operator's license from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Charles J. Rowsey

Mr. Rowsey, 56, has a prosthetic in his right eye due to a traumatic incident in 1985. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my opinion, Mr. Rowsey has sufficient vision to perform the task required to operate a commercial vehicle.'' Mr. Rowsey reported that he has driven straight trucks for 32 years, accumulating 2.2 million miles, and tractor-trailer combinations for 32 years, accumulating 1 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Kenneth C. Stump

Mr. Stump, 50, has a macular scar in his left eye since 2016. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2019, his ophthalmologist stated, ''In my opinion the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle as long as he is wearing his glasses at the time.'' Mr. Stump reported that he has driven tractor-trailer combinations for six years, accumulating 1 million miles. He holds a Class A CDL from Florida. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Jose M. Vasquez

Mr. Vasquez, 50, has macular scarring in his left eye due to an infection in childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2019, his ophthalmologist stated, ''Based on the Snellen Visual Acuity Scale, and my professional opinion, the patient has sufficient vision to perform tasks of operating a commercial vehicle.'' Mr. Vasquez reported that he has driven straight trucks for 18 years, accumulating 129,000 miles. He holds a Class B CDL from New York. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: December 20, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–28161 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0385; FMCSA–2014–0387; FMCSA–2017–0058]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 34 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on December 26, 2019. The exemptions expire on December 26, 2021. Comments must be received on or before January 29, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0385, FMCSA–2014–0387, or FMCSA–2017–0058 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2014-0385* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2017-0058*. Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2014–0385; FMCSA–2014–0387; FMCSA–2017–0058), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0385* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2017-0058.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2014-0385* or *http://www.regulations.gov/docket?D=FMCSA-2014-0387* or *http://www.regulations.gov/docket?D=FMCSA-2017-0058* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 34 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 34 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 34 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of December 26, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 34 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Mario Alvarado (CA)
Kasseth Andrews (MA)
Randy Bailey (NJ)
Ivan Batista (NJ)
Joseph Bence (OH)
Daryl A. Broker (MN)
Justin Brooks (WA)
Christa Butner (NC)
William Darnell (AZ)
Travis K. Davisson (IA)
Sean M. Dearsman (OH)
Mitchell R. Estill (MO)
Lucius Fowler (IL)
Buddy Gann (IN)
Teela Gilmore (GA)
John Grebenc (MN)
Clint Homom (IL)
Paul Hoover (PA)
Amy Ivins (NE)
Thomas Jensen (IA)
Charles J. Jernigan, Jr. (SC)
James M. Johnson (MN)
Wayne A. Kramas (WI)
Daniel Krytosek (MN)
Nicholas Kulasa (IL)
Aaron S. Leader (AZ)
John R. Martikainen (CT)
James E. Redmond (IL)
Dustin Sargent (TX)
Michael Singleton (TX)
Marshall Smith (TX)
Michael Swetnam (TX)
Courtney D. Turner (VA)
Edward J. Zozaya (AZ)

The drivers were included in docket number FMCSA–2014–0385, FMCSA–2014–0387, or FMCSA–2017–0058. Christa Butner was previously published under the name Christa Coppley. Their exemptions are applicable as of December 26, 2019, and will expire on December 26, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 34 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41 (b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Issued on: December 23, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–28157 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0110]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 29 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on November 19, 2019. The exemptions expire on November 19, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0110* and choose the document to review. If you

do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On October 16, 2019, FMCSA published a notice announcing receipt of applications from 29 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (FR 84 55375). The public comment period ended on November 15, 2019, and four comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received six comments in this proceeding. Edward Wassels from St. Louis Missouri commented that the hearing exemption process is unclear and would like FMCSA to provide an online status indication tool to help applicants better understand where their application is in the hearing exemption process. He would also like FMCSA to provide a step-by-step guide to help applicants have a better understanding of how the process works. FMCSA acknowledges Mr. Wassels' concerns and has updated the hearing application packages located on the FMCSA website with an overview of the exemption process to assist applicants in understanding the process and what specific information must be submitted. Dain Covington of Williamsburg, Virginia encourages those who are Deaf and Hard of Hearing and interested in operating a CMV to apply for a hearing exemption from FMCSA in order to obtain a CDL. He also recommended FMCSA reduce the waiting time for those who apply for a hearing exemption to speed up the process of obtaining a CDL. FMCSA processes hearing exemptions as quickly as possible. However, the Agency is required to publish a **Federal Register** notice allowing the public 30 days to comment on the application for each exemption prior to making a final determination whether to grant or deny each exemption. J. T. Stryszyk provided two identical comments in support of Deaf and Hard of Hearing individuals being able to obtain a hearing exemption so that they can operate a CMV in interstate commerce. An anonymous commenter also provided support. Nicole Neft of Driver and Vehicle Services, State of Minnesota commented that Minnesota has no objections to Ryan Arrington and Abdiwahab Olow receiving a hearing exemption to drive in interstate commerce.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 29 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Jeremy T. Albright (CA)
Byron S. Allen (FL)
Carlos Arellano (CA)
Ryan Arrington (MN)
Jeffrey A. Barbuto NH)
Dain Covington (VA)
Tymekia L. Crawford (TX)
Brian J. Davlin (NV)
John Fazio (OH)
Alvin Grasty (PA)
Derek Hawkins (NH)
Emil Iontchev (IL)
Shane Kennedy (FL)
Lacey Mathis (TN)
Billy Joe McClain (NY)
Danny W. McGowan (WV)
Allan Mitchell (NY)
Ronald Misner (CA)
Matthew Moore (TX)
Abdiwahab S. Olow (MN)
Timothy Roberts (TN)
Gilbert L. Swagger (TX)
Teddy R. Tice (NY)
Cameron Thomas (IA)
Tyler Turner (TN)
Jerry Ward (NC)
Edward Wessels (MO)
Joseph Williams (MD)
Thomas E. Wray (NC)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: December 20, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–28158 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0017]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 11 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on December 3, 2019. The exemptions expire on December 3, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA–2019–0017* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On October 31, 2019, FMCSA published a notice announcing receipt of applications from 11 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 58441). The public comment period ended on December 2, 2019, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received two comments in this proceeding. Taylor Deist submitted a comment disagreeing with the Agency's decision to grant exemptions to the 11 individuals, citing safety concerns related to their vision. The basis for granting the exemptions is explained in Section IV of this document. FMCSA has evaluated each applicant and determined that granting an exemption is likely to achieve a level of safety greater than, or equal to, that which would be achieved absent such exemption.

Tara Coffey submitted a comment disagreeing with the Agency's decision to grant exemptions to the 11 individuals, citing safety concerns related to their vision. The basis for granting exemptions is explained in Section IV of this document. FMCSA has determined that all of the individuals listed in this notice meet the criteria required for an exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 31, 2019, **Federal Register** notice (84 FR 58441) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 11 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, cataract, complete loss of vision, corneal scar, glaucoma, optic nerve atrophy, partial optic nerve atrophy, prosthesis, and retinal detachment. In most cases, their eye conditions did not develop recently. Six of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that developed their vision conditions as adults have had them for a range of 6 to 25 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 5 to 72 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Willie V. Brannon, Jr. (OK)
Benjamin E. Brown (WY)
Charles L. Gaines (NC)
James L. Houser (NE)
Andrew J. Kite III (GA)
Sean P. McSperitt (OR)
Matthew J. Morrison (MD)
Frederick L. PeLong (IA)
Martin S. Reese (CA)
Devin M. Smith (OH)
Anthony C. White (AL).

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: December 20, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–28160 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2019–0004–N–20]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA is informing the public that FRA proposes to make three minor revisions to the Quarterly Positive Train Control (PTC) Progress Report Form (Form FRA F 6180.165) and Annual PTC Progress Report Form (Form FRA F 6180.166), which the Office of Management and Budget (OMB) previously approved on September 24, 2018, under its regular processing procedures. In addition, FRA is now proposing to require host railroads operating FRA-certified PTC systems to submit a Statutory Notification of PTC System Failures (Form FRA F 6180.177) to fulfill the temporary reporting requirement under the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), and FRA is proposing an alternative reporting frequency and reporting location, as the statutory mandate authorizes FRA to establish. Before submitting this revised information collection request (ICR) to

OMB for regular clearance and approval, FRA is soliciting public comment on specific aspects of the proposed ICR described below.

DATES: Interested persons are invited to submit comments on or before February 28, 2020.

ADDRESSES: Submit written comments on the ICR activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–0553,'' and should also include the title of the ICR. Alternatively, comments may be emailed to Ms. Wells at *hodan.wells@dot.gov,* or Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–0440); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION:

I. Public Comment Under the PRA

The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–1320.12.

Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

II. Background on the Quarterly and Annual PTC Progress-Related Reporting Requirements

Under the PTCEI Act, each railroad subject to 49 U.S.C. 20157(a) must submit an annual progress report to FRA by March 31, 2016, and annually thereafter, until it has fully implemented an FRA-certified and interoperable PTC system. 49 U.S.C. 20157(c)(1). The PTCEI Act specifically requires each railroad to provide certain information in the annual reports regarding its progress toward implementing a PTC system, in addition to any other information FRA requests. *See id.* Further, 49 U.S.C. 20157(c)(2) requires FRA to conduct compliance reviews at least annually to ensure each railroad is complying with its revised PTC Implementation Plan (PTCIP), including any FRA-approved amendments. The PTCEI Act requires railroads to provide information to FRA that FRA determines is necessary to adequately conduct such compliance reviews. 49 U.S.C. 20157(c)(2).

Accordingly, under its statutory and regulatory authority, FRA currently requires, and seeks to continue requiring, each subject railroad to submit Quarterly PTC Progress Reports (Form FRA F 6180.165) and Annual PTC Progress Reports (Form FRA F 6180.166), until the railroad finishes fully implementing an FRA-certified and interoperable PTC system on its required main lines. *See* 49 U.S.C. 20157(c)(1)–(2); *see also* 49 CFR 236.1009(h). Each subject railroad must submit these quarterly reports by the due dates in the following table: [1]

	Coverage period	Due dates for quarterly PTC progress reports
Q1	January 1–March 31	April 30.
Q2	April 1–June 30	July 31.
Q3	July 1–September 30	October 31.
Q4	October 1–December 31	January 31.

Each applicable railroad must submit its Quarterly PTC Progress Reports on Form FRA F 6180.165 and its Annual PTC Progress Reports on Form FRA F 6180.166 on FRA's Secure Information Repository at *https://sir.fra.dot.gov.* By law, only 35 railroads [2] (including 32 host railroads and 3 tenant-only commuter railroads) are currently required to submit Quarterly PTC Progress Reports (Form FRA F 6180.165) and Annual PTC Progress Reports (Form FRA F 6180.166).

III. Proposed Revisions to the Quarterly and Annual PTC Progress Report Forms

On September 24, 2018, OMB approved the Quarterly PTC Progress

[1] As stated on the cover page of the Quarterly PTC Progress Report (Form FRA F 6180.165), ''A railroad must submit quarterly reports until a PTC system is fully implemented on all required main lines under 49 U.S.C. 20157 and 49 CFR part 236, subpart I, including a quarterly report for the quarter in which the railroad completes full PTC system implementation.'' *See* 49 U.S.C. 20157(c)(2).

[2] Currently, 42 railroads are directly subject to the statutory mandate to implement a PTC system. However, only 35 railroads are currently subject to these progress-related reporting requirements, given that by law, such reporting requirements no longer apply to the 4 host railroads that fully implemented PTC systems as of December 31, 2018, and 3 other tenant-only commuter railroads that fully implemented their PTC systems to date.

Report (Form FRA F 6180.165) and Annual PTC Progress Report (Form FRA F 6180.166) for a period of 18 months, expiring on March 31, 2020. The current Quarterly PTC Progress Report Form and Annual PTC Progress Report Form, as approved through March 31, 2020, can be accessed and downloaded in FRA's eLibrary at: *https://www.fra.dot.gov/eLib/details/L17365* and *https://www.fra.dot.gov/eLib/details/L17366,* respectively. These versions of the forms took into account prior comments from the Association of American Railroads (AAR) on behalf of itself and its member railroads; the American Public Transportation Association on behalf of the Northeast Illinois Commuter Rail System (Metra), the Utah Transit Authority, the Tri-County Metropolitan Transportation District of Oregon, and the Fort Worth Transportation Authority; and industry stakeholders during FRA's public meeting on April 19, 2016. FRA published minutes from the public meeting on *www.regulations.gov* under Docket No. FRA 2016–0002–N–17.[3]

Following the 60-day public comment period after this notice is published, FRA will request OMB's re-approval of the forms, with the three changes described below. First, per the industry's and OMB's previous recommendations, FRA has considered ways in which it can phase out certain requirements of the Quarterly PTC Progress Report (Form FRA F 6180.165) and Annual PTC Progress Report (Form FRA F 6180.166), while railroads continue to fully implement their PTC systems on the required main lines.

Although many of the specific reporting requirements are statutorily required under 49 U.S.C. 20157(c)(1)(A)–(G), FRA is amenable to making certain sections of both forms optional for most railroads, at this stage. Specifically, FRA is proposing to make the following sections of both the Quarterly PTC Progress Report (Form FRA F 6180.165) and Annual PTC Progress Report (Form FRA F 6180.166) optional for most railroads: Section 2 (''Update on Spectrum''); Section 3.1 (''Locomotive Status''), except the software-related narrative section; and Section 3.3 (''Infrastructure/Wayside Status'').

FRA proposes that those sections would be optional for any railroad that previously demonstrated to FRA it had finished acquiring all necessary spectrum and installing all PTC system hardware for the implementation of its PTC system, consistent with the governing FRA-approved PTCIP. This would encompass nearly all railroads subject to the statutory mandate that are still in the process of fully implementing their PTC systems—including the railroads currently field testing their PTC systems, conducting revenue service demonstration (RSD) or expanding RSD to additional main lines, and conducting interoperability testing with their PTC-required tenant railroads—given that railroads generally needed to finish acquiring spectrum and installing PTC system hardware by December 31, 2018, to qualify for and obtain FRA's approval of an alternative schedule and sequence by law. *See* 49 U.S.C. 20157(a)(3)(B).

The only railroads for which the above sections—Sections 2, 3.1, and 3.3—would remain mandatory are those railroads that are still in the spectrum acquisition or hardware installation phases, which is the case for certain railroads that, for example: (A) Commenced regularly scheduled intercity passenger or commuter rail service after December 31, 2018, and therefore did not need to qualify for or obtain FRA's approval of an alternative schedule; (B) are in the process of constructing new main lines subject to the statutory mandate; or (C) have one or more lines that are subject to a temporary main line track exception and must still implement a PTC system. In those three cases, FRA would still need to obtain updates regarding such railroads' progress toward acquiring all necessary spectrum and installing all necessary PTC system hardware.

Second, in Section 4 (entitled ''Installation/Track Segment Progress'') of both the quarterly form and the annual form, FRA proposes adding a new option to the drop-down menus. Currently, the options include only: ''Not Started,'' ''Installing,'' ''Field Testing,'' ''Revenue Service Demonstration,'' and ''Operational/Complete.'' Given that some railroads are beyond the installation phase, but not yet at the field testing phase on multiple track segments, FRA proposes to add a new option to the drop-down menu, specifically labeled, ''Pre-field Testing.'' That way, such railroads will not need to select ''Installing'' or ''Field Testing,'' neither of which would accurately represent the actual status of a railroad's specific track segment. This minor revision to the forms will help ensure clearer and more accurate reporting, without imposing an additional reporting burden. For consistency with Section 4, FRA also proposes to update the corresponding drop-down menu in Section 6 (entitled ''Update on Interoperability Progress'') of both forms to include the same options: ''Not Started,'' ''Installing,'' ''Pre-field Testing,'' ''Field Testing,'' ''Revenue Service Demonstration,''[4] and ''Operational/Complete.''

Third, in Section 6 (entitled ''Update on Interoperability Progress'') of both the quarterly form and the annual form, FRA proposes revising the heading of the last column in the table to state, ''Current Tenant Interoperability Status,'' instead of ''Current Tenant Implementation Status,'' to help ensure proper interpretation. For example, at least one commuter railroad has improperly listed the status of a Class I tenant railroad's progress toward fully implementing a PTC system on the Class I railroad's own main lines (so as a host railroad), instead of the Class I railroad's status specifically as a tenant railroad on that commuter railroad's required main lines. FRA expects that this minor revision might make this heading clearer.

Railroads' submission of Quarterly PTC Progress Reports (Form FRA F 6180.165) and Annual PTC Progress Reports (Form FRA F 6180.166)—consistent with the reporting requirements under the PTCEI Act—enables FRA to effectively monitor railroads' progress toward fully implementing FRA-certified and interoperable PTC systems on the approximately 57,855 route miles subject to the statutory mandate. Such reporting also enables FRA to identify railroad-specific and industry-wide obstacles to full PTC system implementation and to provide timely technical assistance. Moreover, this reporting framework enables FRA to provide the public and Congress with data-driven status reports on industry's progress toward implementing this mandated technology on a regular basis, which will be especially important throughout 2020, as the statutory deadline for most mandated railroads to fully implement PTC systems is December 31, 2020.

IV. Proposal for a New Mandatory Form—Statutory Notification of PTC System Failures (Form FRA F 6180.177)

Under the Early Adoption provisions in the PTCEI Act, the statutory mandate explicitly recognizes that certain PTC system failures (*e.g.,* initialization failures, cut outs, and malfunctions) will occur while, and even after,

[3] For a summary of past oral and written comments and FRA's responses to the comments, please see 81 FR 28140 (May 9, 2016); 81 FR 65702 (Sept. 23, 2016); and 83 FR 39152 (Aug. 8, 2018).

[4] Previously, the relevant part of the drop-down menu allowed a host railroad to indicate only that a tenant railroad was generally conducting ''testing,'' without specifying the stage of testing.

railroads fully implement FRA-certified and interoperable PTC systems on the mandated main lines. *See* 49 U.S.C. 20157(j)(1)–(4). The PTCEI Act temporarily prohibits FRA from imposing or enforcing the operational restrictions (*e.g.,* speed restrictions) under FRA's regulations governing signal and train control systems (specifically, 49 CFR 236.567) and FRA's PTC regulations (specifically, 49 CFR 236.1029), ''provided that such carrier operates at an equivalent or greater level of safety than the level achieved immediately prior to the use or implementation of its [PTC] system.'' 49 U.S.C. 20157(j)(1).

This statutory prohibition specifying that ''any railroad . . . shall not be subject to the operational restrictions'' under 49 CFR 236.567 or 236.1029 is in effect from October 29, 2015, to approximately December 31, 2021.[5] *See* 49 U.S.C. 20157(j)(1). In addition, the PTCEI Act established a new reporting requirement that applies only during that period and only to PTC systems that FRA has certified and have been implemented, including on a subset of a railroad's mandated main lines. 49 U.S.C. 20157(j)(4). For example, acknowledging the incremental nature of implementation, the PTCEI Act required Class I railroads to demonstrate they had ''implemented a [PTC] system or initiated revenue service demonstration on the *majority* of [PTC-mandated] territories . . . or route miles that are owned or controlled by such carrier[s],'' to qualify for an alternative schedule and sequence by law. 49 U.S.C. 20157(a)(3)(B)(vi) (emphasis added).

As a default, the reporting requirement under 49 U.S.C. 20157(j)(4) specifies that when an FRA-certified PTC system ''fails to initialize, cuts out, or malfunctions,'' the railroad must submit a notification to the appropriate FRA regional office within 7 days of the system failure, and the notification must include a description of the safety measures the railroad has in place. However, the PTCEI Act also authorizes FRA to establish an alternative reporting deadline (instead of within 7 days of each occurrence) and an alternative reporting location (instead of submitting the notifications to the appropriate FRA region). *See* 49 U.S.C. 20157(j)(4); 49 CFR 1.89.

To be clear, FRA is authorized to establish only an alternative reporting deadline and an alternative reporting location, and the statutory mandate does not permit FRA to change either the scope of this temporary reporting requirement or the information that must be submitted. At multiple industry meetings, FRA proactively sought railroads' input regarding possible alternative reporting deadlines and locations, focusing on options that would be reasonable and consistent with the statutory reporting framework.[6]

At the industry meetings, FRA and industry stakeholders generally reached a consensus about a reasonable alternative for a reporting location. Accordingly, FRA proposes that the Statutory Notification of PTC System Failures, under 49 U.S.C. 20157(j)(4), must be submitted to FRA's headquarters, using an electronic, web-based form, instead of notifying each applicable FRA region. Such centralized reporting would better enable FRA to aggregate and analyze the required data regarding PTC system initialization failures, cut outs, and malfunctions. FRA is currently designing and developing a web-based form for the Statutory Notification of PTC System Failures (Form FRA F 6180.177), and FRA notes that the electronic form will contain fields for the information explicitly required under 49 U.S.C. 20157(j)(4) and as described below.

With respect to the default reporting deadline under the PTCEI Act (*i.e.,* within 7 days of each occurrence), many railroads have stressed that notifying FRA each time an FRA-certified PTC system fails to initialize, cuts out, or malfunctions would be extremely burdensome, given the frequency of such occurrences. As an example, one commuter railroad reported more than 75 instances of initialization failures, cut outs, and malfunctions, during a one-week period in October 2019. FRA proposes requiring that a railroad consolidate such information prior to submission, rather than notifying FRA within 7 days of each occurrence and submitting such data in a piecemeal manner, which could occur under the default requirement in 49 U.S.C. 20157(j)(4).

Acknowledging railroads' concerns about the burdens associated with the default reporting frequency under 49 U.S.C. 20157(j)(4), FRA proposes instead a two-tiered or bifurcated reporting deadline/frequency for this temporary reporting requirement, where the reporting frequency would depend on whether or not the host railroad has fully implemented an FRA-certified and interoperable PTC system on all its required route miles. First, if a host railroad is operating an FRA-certified PTC system but the railroad is still in the process of fully implementing the PTC system on its required main lines, FRA proposes that such railroads must submit a *quarterly* notification of the PTC system's initialization failures, cut outs, and malfunctions, during the ongoing implementation process. Such quarterly notifications would be due on the same dates as the Quarterly PTC Progress Reports (Form FRA F 6180.165):

	Coverage period	Due dates for quarterly notifications of PTC system failures
Q1	January 1–March 31	April 30.
Q2	April 1–June 30	July 31.
Q3	July 1–September 30	October 31.
Q4	October 1–December 31	January 31.

For example, this would mean that most host railroads that have obtained PTC System Certification to date would submit quarterly notifications until January 31, 2021, as most host railroads will be in the process of fully implementing FRA-certified and interoperable PTC systems on their mandated main lines until December 31, 2020. FRA believes that requiring host railroads to submit failure-related notifications on a quarterly basis (instead of within 7 days of each occurrence) *during* the implementation process is reasonable, given that such

[5] Specifically, the PTCEI Act states that the Early Adoption period ends one year *after* the last Class I railroad obtains PTC System Certification from FRA and finishes fully implementing a PTC system on all of its required main lines.

[6] For example, FRA solicited input about the statutory failure-related reporting requirement at FRA's first PTC symposium on June 15, 2018; two of FRA's three PTC collaboration sessions during 2019, on February 6, 2019, and October 2, 2019; and several AAR PTC Executive Committee meetings, including participation by the Class I railroads, Amtrak, Metra, the Southern California Regional Rail Authority (Metrolink), and other host railroads subject to the statutory mandate.

host railroads are concurrently focusing on activating their FRA-certified PTC systems on their remaining required main lines and achieving interoperability with their tenant railroads by December 31, 2020. FRA believes that receiving the failure-related data on a quarterly basis would still enable FRA to compile and analyze the data to understand and monitor the performance and reliability of PTC systems over time.

Second, once a host railroad has fully implemented its FRA-certified and interoperable PTC system on all its required main lines, FRA proposes that the host railroad must submit the Statutory Notification of PTC System Failures (Form FRA F 6180.177) *monthly,* instead of quarterly. This is still significantly less burdensome than the default reporting deadline under 49 U.S.C. 20157(j)(4)—*i.e.,* within 7 days of each discrete occurrence. For example, upon FRA's receipt of OMB's approval, each of the four host railroads that fully implemented FRA-certified and interoperable PTC systems by December 31, 2018,[7] would immediately begin submitting monthly notifications, rather than piecemeal notifications within 7 days each time its PTC system fails to initialize, cuts out, or malfunctions. FRA proposes that the due date for the monthly notification would be the 15th of the following month, so, for example, the notification regarding PTC system initialization failures, cut outs, and malfunctions during March 2020 would be due by April 15, 2020, for the subset of host railroads that have fully implemented an FRA-certified PTC system.

The other host railroads subject to the statutory mandate that are operating FRA-certified PTC systems but that are still in the process of fully implementing their PTC systems (*e.g.,* 6 Class I railroads, Amtrak, and the Southeastern Pennsylvania Transportation Authority, as of November 1, 2019, and any other host railroad that obtains PTC System Certification going forward) would transition from submitting the Statutory Notifications of PTC System Failures (Form FRA F 6180.177) on a quarterly basis to a monthly basis, when they finish fully implementing their PTC systems on their required main lines. For simplicity, in general, this two-tiered reporting framework would mean that most host railroads that have obtained PTC System Certification would submit quarterly Statutory Notifications of PTC System Failures throughout 2020, and then monthly notifications throughout 2021.[8]

As noted above, the PTCEI Act authorizes FRA to establish only an alternative reporting deadline (instead of within 7 days of each occurrence) and an alternative reporting location (instead of submitting the notifications to the appropriate FRA region). The proposed Statutory Notification of PTC System Failures (Form FRA F 6180.177) would, by necessity, contain a table in which the host railroad would identify the number of times each type of PTC system failure identified in the statutory mandate occurred during the reporting period: Any failure to initialize, any cut out, and any malfunction, as defined below. 49 U.S.C. 20157(j)(4). During FRA's industry meetings to date, railroads have requested clarification regarding the meaning and scope of these statutory terms. Given that the statutory mandate requires railroads to notify FRA any time a PTC system ''fails to initialize, cuts out, or malfunctions,'' FRA interprets these terms reasonably broadly and in accordance with their plain language meaning, to encompass the following, for purposes of this temporary reporting requirement:

- *Failure to Initialize:* Any locomotive or train that departs the initial terminal without being governed by a PTC system.
- *Cut Out:* Any cut out of a PTC system en route, including when the PTC system cuts out on its own or a person cuts out the system, unless the cut out was necessary to exit PTC-governed territory and enter non-PTC territory.
- *Malfunction:* Any failure of a PTC system, subsystem, or component that prevents, or could prevent, the PTC system from performing the functions mandated under 49 U.S.C. 20157(i)(5) and 49 CFR part 236, subpart I.

The proposed web-based form (Form FRA F 6180.177) would require host railroads to identify the number of PTC system initialization failures, cut outs, and malfunctions by state and subdivision[9] to enable FRA to closely monitor trends in PTC system reliability throughout the country and focus its resources, for example, on any areas where such failures are occurring at a high rate. FRA seeks comment about this proposed aspect of the information collection. Although a categorization of such information by state and subdivision is FRA's preference, FRA may modify its approach based on industry's comments submitted during the 60-day comment period. Please note, however, that absent a breakdown by state and subdivision, FRA would require host railroads to identify the number of PTC system initialization failures, cut outs, and malfunctions *per* FRA region,[10] at a minimum. That alternative approach would retain the same minimum level of geographical information about where such PTC system failures are occurring, as explicitly required under the default reporting requirement under 49 U.S.C. 20157(j)(4).

Also, based on railroads' input at industry meetings, FRA notes that the proposed Statutory Notification of PTC System Failures (Form FRA F 6180.177) would additionally require a host railroad to list a percentage, demonstrating how the occurrences of PTC system initialization failures, cut outs, and malfunctions compare to all operations on that host railroad's PTC-governed main lines.[11] Several railroads have commented that, without such a percentage or context, the frequency of these failures might otherwise seem high, and a percentage would help convey the actual rate of such failures.

In addition, at industry meetings to date, multiple railroads have expressed that FRA should not require tenant railroads to submit this failure-related information directly to FRA, but via their host railroads. Accordingly, FRA proposes that only host railroads subject to the statutory mandate (currently 36 host railroads) would submit the Statutory Notification of PTC System Failures (Form FRA F 6180.177), and these notifications would encompass both a host railroad's and its tenant railroads' PTC system initialization failures, cut outs, and malfunctions.[12]

[7] Metrolink, the North County Transit District, the Port Authority Trans-Hudson, and Portland & Western Railroad.

[8] By law, this temporary reporting requirement under 49 U.S.C. 20157(j)(4) sunsets on approximately December 31, 2021—or more specifically, one year after the last Class I railroad obtains PTC System Certification from FRA and finishes fully implementing an FRA-certified and interoperable PTC system on all its required main lines.

[9] Or any other categorization a host railroad uses in its timetables, including district, territory, main line, branch, or corridor. FRA recognizes that this specific type of information (*i.e.,* a breakdown by state and subdivision) is not required under 49 U.S.C. 20157(j)(4), and FRA would be collecting such information under its general authority under 49 CFR 236.1009(h).

[10] For a map outlining FRA's eight regions, please see: *https://railroads.dot.gov/divisions/regional-offices/regional-offices.*

[11] FRA recognizes that this specific type of information is not required under 49 U.S.C. 20157(j)(4), and FRA would be collecting such information under its general authority under 49 CFR 236.1009(h).

[12] This approach would be consistent with the existing regulatory requirement specifying that a tenant railroad must report a PTC system failure or cut out to ''a designated railroad officer of the *host*

Continued

However, FRA seeks comments about how to structure this element of the web-based form in a way that would both minimize the reporting burden and distinctly represent the number of PTC system initialization failures, cut outs, and malfunctions per tenant railroad.

Finally, as noted above, 49 U.S.C. 20157(j)(4) explicitly requires a railroad to provide in the notification ''a description of the safety measures the affected railroad . . . has in place,'' so the table in the web-based Statutory Notification of PTC System Failures (Form FRA F 6180.177) would contain fields for a host railroad to enter such information.

V. Overview of Information Collection

FRA will submit this ICR to OMB for regular clearance as required by the PRA.

Type of Request: Revision of a currently approved information collection.

Title: Positive Train Control and Other Signal Systems (including the Quarterly Positive Train Control Progress Report, the Annual Positive Train Control Progress Report, and the Statutory Notification of Positive Train Control System Failures).[13]

OMB Control Number: 2130–0553.

Form(s): FRA F 6180.165, FRA F 6180.166, and FRA F 6180.177.

Affected Public: Businesses.

Frequency of Submission: On occasion (depending on the specific reporting requirement).

Respondent Universe: 35 railroads [14] (including 32 host railroads and 3 tenant-only commuter railroads) for the Quarterly PTC Progress Report (Form FRA F 6180.165) and Annual PTC Progress Report (Form FRA F 6180.166); 36 host railroads for the Statutory Notification of PTC System Failures (Form FRA F 6180.177); and varies for other information collections under OMB Control No. 2130–0553, as noted in the table below.

Respondent Burden:

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent
235.6(c)—Expedited application for approval of certain changes described in this section.	42 railroads	10 expedited applications	5 hours	50	3,800
—Copy of expedited application to labor union	42 railroads	10 copies	30 minutes	5	380
—Railroad letter rescinding its request for expedited application of certain signal system changes.	42 railroads	1 letter	6 hours	6	456
—Revised application for certain signal system changes	42 railroads	1 application	5 hours	5	380
—Copy of railroad revised application to labor union	42 railroads	1 copy	30 minutes	.5	38
236.1—Railroad maintained signal plans at all interlockings, automatic signal locations, and controlled points, and updates to ensure accuracy.	700 railroads	25 plan changes	15 minutes	6.3	479
236.15—Designation of automatic block, traffic control, train stop, train control, cab signal, and PTC territory in timetable instructions.	700 railroads	10 timetable instructions	30 minutes	5	380
236.18—Software management control plan—New railroads	2 railroads	2 plans	160 hours	320	24,320
236.23(e)—The names, indications, and aspects of roadway and cab signals shall be defined in the carrier's Operating Rule Book or Special Instructions. Modifications shall be filed with FRA within 30 days after such modifications become effective.	700 railroads	2 modifications	1 hour	2	152
236.587(d)—Certification and departure test results	742 railroads	4,562,500 train departures	5 seconds	6,337	481,612
236.905(a)—Railroad Safety Program Plan (RSPP)—New railroads.	2 railroads	2 RSPPs	40 hours	80	6,080
236.913(a)—Filing and approval of a joint Product Safety Plan (PSP).	742 railroads	1 joint plan	2,000 hours	2,000	230,000
(c)(1)—Informational filing/petition for special approval	742 railroads	.5 filings/approval petitions	50 hours	25	1,900
(c)(2)—Response to FRA's request for further data after informational filing.	742 railroads	.25 data calls/documents	5 hours	1 hour	76
(d)(1)(ii)—Response to FRA's request for further information within 15 days after receipt of the Notice of Product Development (NOPD).	742 railroads	.25 data calls/documents	1 hour	.25	19
(d)(1)(iii)—Technical consultation by FRA with the railroad on the design and planned development of the product.	742 railroads	.25 technical consultations	5 hours	1.3 hour	99
(d)(1)(v)—Railroad petition to FRA for final approval of NOPD.	742 railroads	.25 petitions	1 hour	.25	19
(d)(2)(ii)—Response to FRA's request for additional information associated with a petition for approval of PSP or PSP amendment.	742 railroads	1 request	50 hours	50	3,800
(e)—Comments to FRA on railroad informational filing or special approval petition.	742 railroads	.5 comments/letters	10 hours	5	380
(h)(3)(i)—Railroad amendment to PSP	742 railroads	2 amendments	20 hours	40	3,040
(j)—Railroad field testing/information filing document	742 railroads	1 field test document	100 hours	100	7,600
236.917(a)—Railroad retention of records: results of tests and inspections specified in the PSP.	13 railroads with PSP	13 PSP safety results	160 hours	2,080	158,080
(b)—Railroad report that frequency of safety-relevant hazards exceeds threshold set forth in PSP.	13 railroads	1 report	40 hours	40	3,040
(b)(3)—Railroad final report to FRA on the results of the analysis and countermeasures taken to reduce the frequency of safety-relevant hazards.	13 railroads	1 report	10 hours	10	760
236.919(a)—Railroad Operations and Maintenance Manual (OMM).	13 railroads	1 OMM update	40 hours	40	3,040
(b)—Plans for proper maintenance, repair, inspection, and testing of safety-critical products.	13 railroads	1 plan update	40 hours	40	3,040
(c)—Documented hardware, software, and firmware revisions in OMM.	13 railroads	1 revision	40 hours	40	3,040
236.921 and 923(a)—Railroad Training and Qualification Program.	13 railroads	1 program	40 hours	40	3,040
236.923(b)—Training records retained in a designated location and available to FRA upon request.	13 railroads	350 records	10 minutes	58	4,408
Form FRA F 6180.165—Quarterly PTC Progress Report Form (49 U.S.C. 20157(c)(2)).	35 railroads	140 reports/forms	23.22 hours	3,251	247,076

railroad as soon as safe and practicable.'' *See* 49 CFR 236.1029(b)(4) (emphasis added).

[13] FRA makes a technical correction to the title of OMB Control Number 2130–0553.

[14] Currently, 42 railroads are directly subject to the statutory mandate to implement a PTC system. However, only 35 railroads are currently subject to these progress-related reporting requirements, given that by law, such reporting requirements no longer apply to the 4 host railroads that fully implemented PTC systems as of December 31, 2018, and 3 other tenant-only commuter railroads that fully implemented their PTC systems to date.

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent
Form FRA F 6180.166—Annual PTC Progress Report Form (49 U.S.C. 20157(c)(1) and 49 CFR 236.1009(a)(5)).	35 railroads	35 reports/forms	40.12 hours	1,404	106,704
Form FRA F 6180.177—Statutory Notification of PTC System Failures (*New Form* Under 49 U.S.C. 20157(j)(4)).	36 railroads	190 reports/forms	1 hour	190	14,440
236.1001(b)—A railroad's additional or more stringent rules than prescribed under 49 CFR part 236, subpart I.	36 railroads	1 rule or instruction	40 hours	40	4,600
236.1005(b)(4)(iii)—A railroad's request for a *de minimis* exception, in a PTCIP or an RFA, based on a minimal quantity of PIH materials traffic.	7 Class I railroads	1 exception request	40 hours	40	3,040
(g)(1)(i)—A railroad's request to temporarily reroute trains not equipped with a PTC system onto PTC-equipped tracks and vice versa during certain emergencies.	36 railroads	45 rerouting extension requests.	8 hours	360	27,360
(g)(1)(ii)—A railroad's written or telephonic notice to the applicable FRA Regional Administrator of the conditions necessitating emergency rerouting and other required information under 236.1005(i).	36 railroads	45 written or telephonic notices.	2 hours	90	6,840
(g)(2)—A railroad's temporary rerouting request due to planned maintenance not exceeding 30 days.	36 railroads	720 requests	8 hours	5,760	437,760
(h)(1)—A response to any request for additional information from the FRA Regional Administrator or Associate Administrator, prior to commencing rerouting due to planned maintenance.	36 railroads	10 requests	2 hours	20	1,520
(h)(2)—A railroad's request to temporarily reroute trains due to planned maintenance exceeding 30 days.	36 railroads	160 requests	8 hours	1,280	97,280
236.1006(b)(4)(iii)(B)—A progress report due by December 31, 2020, and by December 31, 2022, from any Class II or III railroad utilizing a temporary exception under this section.	36 railroads	5 reports	16 hours	80	6,080
236.1007(c)—An HSR–125 document accompanying a host railroad's PTCSP, for operations over 125 mph.	36 railroads	1 HSR–125 document	3,200 hours	3,200	368,000
(c)(1)—A railroad's request for approval to use foreign service data, prior to submission of a PTCSP.	36 railroads	1 request	8,000 hours	8,000	608,000
(d) (formerly (e))—A railroad's request in a PTCSP that FRA excuse compliance with one or more of this section's requirements.	36 railroads	1 request	1,000 hours	1,000	115,000
236.1009(a)(2)—A PTCIP if a railroad becomes a host railroad of a main line requiring the implementation of a PTC system, including the information under 49 U.S.C. 20157(a)(2) and 49 CFR 236.1011.	264 railroads	1 PTCIP	535 hours	535	61,525
(a)(3)—Any new PTCIPs jointly filed by a host railroad and a tenant railroad.	264 railroads	1 joint PTCIP	267 hours	267	30,705
(b)(1)—A host railroad's submission, individually or jointly with a tenant railroad or PTC system supplier, of an unmodified Type Approval.	264 railroads	1 document	8 hours	8	608
(b)(2)—A host railroad's submission of a PTC Development Plan (PTCDP) with the information required under 49 CFR 236.1013, requesting a Type Approval for a PTC system that either does not have a Type Approval or has a Type Approval that requires one or more variances.	264 railroads	1 PTCDP	2,000 hours	2,000	152,000
(e)(3)—Any request for full or partial confidentiality of a PTCIP, Notice of Product Intent (NPI), PTCDP, or PTCSP.	42 railroads	10 confidentiality requests	8 hours	80	6,080
(h)—Any responses or documents submitted in connection with FRA's use of its authority to monitor, test, and inspect processes, procedures, facilities, documents, records, design and testing materials, artifacts, training materials and programs, and any other information used in the design, development, manufacture, test, implementation, and operation of the PTC system, including interviews with railroad personnel.	36 railroads	36 interviews and documents	4 hours	144	10,944
(j)(2)(iii)—Any additional information provided in response to FRA's consultations or inquiries about a PTCDP or PTCSP.	36 railroads	20 documents	400 hours	8,000	608,000
236.1011(e)—Any public comment on PTCIPs, NPIs, PTCDPs, and PTCSPs.	36 railroads	2 public comments	8 hours	16	1,216
236.1015—Any new host railroad's PTCSP meeting all content requirements under 49 CFR 236.1015.	264 railroads	1 PTCSP	8,000 hours	8,000	608,000
(g)—A PTCSP for a PTC system replacing an existing certified PTC system.	36 railroads	1 PTCSP	3,200 hours	3,200	243,200
(h)—A quantitative risk assessment, if FRA requires one to be submitted.	36 railroads	1 assessment	3,200 hours	3,200	243,200
236.1017(a)—An independent third-party assessment, if FRA requires one to be conducted and submitted.	21 railroads	1 assessment	1,600 hours	1,600	184,000
(b)—A railroad's written request to confirm whether a specific entity qualifies as an independent third party.	21 railroads	1 written request	8 hours	8	608
—Further information provided to FRA upon request	21 railroads	1 set of additional information	20 hours	20	1,520
(d)—A request not to provide certain documents otherwise required under Appendix F for an independent, third-party assessment.	21 railroads	1 request	20 hours	20	1,520
(e)—A request for FRA to accept information certified by a foreign regulatory entity for purposes of 49 CFR 236.1017 and/or 236.1009(i).	21 railroads	1 request	32 hours	32	2,432
236.1019(b)—A request for a passenger terminal main line track exception (MTEA).	37 railroads	1 MTEA	160 hours	160	12,160
(c)(1)—A request for a limited operations exception (based on restricted speed, temporal separation, or a risk mitigation plan).	37 railroads	1 request and/or plan	160 hours	160	12,160
236.1021(a)–(d)—Any request for amendment (RFA) to a railroad's PTCIP, PTCDP, and/or PTCSP.	36 railroads	10 RFAs	160 hours	1,600	121,600
(e)—Any public comments, if an RFA includes a request for approval of a discontinuance or material modification of a signal or train control system and a FEDERAL REGISTER notice is published.	5 interested parties	10 RFA public comments	16 hours	160	12,160
236.1023(a)—A railroad's PTC Product Vendor List, which must be continually updated.	36 railroads	2 updated lists	8 hours	16	1,216

CFR section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent
(b)(2)–(3)—A vendor's or supplier's notification, upon receipt of a report of any safety-critical failure of its product, to any railroads using the product.	10 vendors	.5 notifications	8 hours	4	304
(d)—A railroad's submission, to the applicable vendor or supplier, of the railroad's procedures for action upon notification of a safety-critical failure, upgrade, patch, or revision to the PTC system and actions to be taken until it is adjusted, repaired, or replaced.	36 railroads	2.5 notifications	16 hours	40	3,040
(e)—A railroad's database of all safety-relevant hazards, which must be maintained after the PTC system is placed in service.	36 railroads	36 database updates	16 hours	576	43,776
(e)(1)—A railroad's notification to the vendor or supplier and FRA if the frequency of a safety-relevant hazard exceeds the threshold set forth in the PTCDP and PTCSP, and about the failure, malfunction, or defective condition that decreased or eliminated the safety functionality.	36 railroads	.5 notifications	8 hours	4	304
(e)(2)—Continual updates about any and all subsequent failures.	36 railroads	.5 updates	8 hours	4	304
(g)—A railroad's and vendor's or supplier's report, upon FRA request, about an investigation of an accident or service difficulty due to a manufacturing or design defect and their corrective actions.	36 railroads	.5 reports	40 hours	20	1,520
(h)—A PTC system vendor's or supplier's reports of any safety-relevant failures, defective conditions, previously unidentified hazards, recommended mitigation actions, and any affected railroads.	10 vendors	.5 reports	8 hours	4	304
236.1029(b)(4)—A report of an en route failure, other failure, or cut out to a designated railroad officer of the host railroad.	36 railroads	1,000 reports	30 minutes	500	38,000
(h)—An annual report of PTC system failures due April 16th each year after a railroad's applicable deadline for full PTC system implementation.	36 railroads	36 reports	8 hours	288	21,888
236.1031(a)–(d)—A railroad's Request for Expedited Certification (REC).	36 railroads	1 REC letter + supporting documentation.	8 hours	8	608
236.1035(a)–(b)—A railroad's request for authorization to field test an uncertified PTC system and any responses to FRA's testing conditions.	36 railroads	10 requests	40 hours	400	30,400
236.1037(b)—Results of inspections and tests specified in a railroad's PTCSP and PTCDP.	36 railroads	800 records	1 hour	800	60,800
(c)—A contractor's records related to the testing, maintenance, or operation of a PTC system maintained at a designated office.	36 railroads	1,600 records	10 minutes	267	20,292
(d)(3)—A railroad's final report of the results of the analysis and countermeasures taken to reduce the frequency of safety-related hazards below the threshold set forth in the PTCSP.	36 railroads	.5 final reports	160 hours	80	6,080
236.1039(a)–(c), (e)—A railroad's PTC Operations and Maintenance Manual (OMM), which must be maintained and available to FRA upon request.	36 railroads	2 OMM updates	10 hours	20	1,520
(d)—A railroad's identification of a PTC system's safety-critical components, including spare equipment.	36 railroads	1 identified new component	1 hour	1	76
236.1041(a)–(b) and 236.1043(a)—A railroad's PTC Training and Qualification Program (i.e., a written plan).	36 railroads	2 programs	10 hours	20	1,520
236.1043(b)—Training records retained in a designated location and available to FRA upon request.	36 railroads	500 PTC training records	1 minute	8	608
Total	N/A	4,568,393 responses	N/A	68,373	5,533,356

Total Estimated Annual Responses: 4,568,393.

Total Estimated Annual Burden: 68,373 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: 5,533,356.15.[15] [16]

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[15] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

[16] Form FRA F 6180.177: This temporary reporting requirement would expire by law on approximately December 31, 2021, as further explained in Section IV of this notice. *See* 49 U.S.C. 20157(j).

Authority: 44 U.S.C. 3501–3520; 49 U.S.C. 20157.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019–28096 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2019–0004–N–24]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before February 28, 2020.

ADDRESSES: Submit written comments on the ICR activities by mail to either: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad

Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–0537,'' and should also include the title of the ICR. Alternatively, comments may be faxed to 202–493–6216 or 202–493–6497, or emailed to Ms. Wells at *hodan.wells@dot.gov,* or Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–0440) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: FRA regulations in 49 CFR part 207 require railroads to notify States of all designated police officers who perform duties outside of their respective jurisdictions. This is necessary to verify proper police authority.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 746 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per responses (minutes)	Total annual burden hours	Total cost equivalent [1]
207.4(a)—RR Notice to State Officials—Written notice of RR police officer's commission to each State in which the RR police officer shall protect the railroad's property, personnel, passengers, and cargo.	746 railroads	35 written notices	15	9	$684
207.4(b)—RR copy of written notices to State officials.	746 railroads	35 records	2	1	76
207.6—Transfers—Application by RR police officers for new State certification/commission when transferring primary employment or residence from one State to another.	746 railroads	40 records	2	1	76
Total	746 railroads	110 responses	N/A	11	836

[1] The hourly wage rate is obtained from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

Total Estimated Annual Responses: 110.

Total Estimated Annual Burden: 11 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $836.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019–28128 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0012]

Deepwater Port License Application: Texas COLT LLC

AGENCY: Maritime Administration, U.S. Department of Transportation.

ACTION: Notice of application withdrawal.

SUMMARY: The Maritime Administration (MARAD) and the U.S. Coast Guard (USCG) announce the cancellation of all actions related to the processing of a license application for the proposed Texas COLT LLC deepwater port. The action announced here includes cancellation of all activities related to the preparation of an Environmental Impact Statement that was announced on Friday, March 8, 2019, in **Federal Register** Volume 84 Number 46 (Notice of Intent; Notice of Public Meeting; Request for Comments). The action is taken in response to the applicant's decision to withdraw the application.

DATES: The cancellation of all actions related to this deepwater port license application was effective December 10, 2019.

ADDRESSES: The public docket for the COLT deepwater port license application is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The docket may be viewed electronically at *www.regulations.gov* under the docket number for this project, which is MARAD–2019–0012. The Federal Docket Management Facility's telephone number is 202–366–9317 or 202–366–9826, the fax number is 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Smith, USCG, telephone: 202–372–1413, email: *Ken.A.Smith@uscg.mil;* or Mr. Linden Houston, MARAD, telephone: 202–366–4839, email: *Linden.Houston@dot.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2019, MARAD received notification from the applicant of the withdrawal of its application to own, construct, and operate a deepwater port for a liquefied natural gas deepwater port facility, located approximately 27.8 nautical miles off the coast of Brazoria County, Texas in a water depth of approximately 110 feet and connected to existing offshore pipelines. Consequently, MARAD has terminated all activities pertaining to COLT's deepwater port license application. All agency records and documents related to the COLT deepwater port license application will be preserved and retained by MARAD and USCG. Further information pertaining to this application may be found in the public docket (see **ADDRESSES**).

(Authority: 33 U.S.C. 1501 *et seq.,* 49 CFR 1.93(h)).

Dated: December 23, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–28137 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0046; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2018–2019 Swift Sprite Alpine 4 Single Axle Camper Trailers Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2018–2019 Swift Sprite Alpine 4 single axle camper trailers that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition January 29, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and

affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

America's Import & Export Authority Inc., (Registered Importer R–17–423), of Fort Myers, Florida has petitioned NHTSA to decide whether nonconforming MY 2018–2019 Swift Sprite Alpine 4 single axle camper trailers are eligible for importation into the United States. The vehicles which America's Import & Export Authority Inc. believes are capable of being readily altered to conform to all applicable FMVSS.

America's Import & Export Authority Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 2018–2019 Swift Sprite Alpine 4 single axle camper trailers, as originally manufactured, conform to many applicable FMVSS, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2018–2019 Swift Sprite Alpine 4 single axle camper trailers, as originally manufactured, are only subject to: FMVSS Nos. 108, *Lamps, Reflective Devices and Associated Equipment,* 109, *New pneumatic and certain specialty tires,* 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less.* The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* Installation of rear reflectors, side markers, side reflectors, clearance lamps, identification lamps and upper lights, front side marker lamps and reflectors, intermediate side marker lamps and reflectors, and license plate lamp.

FMVSS No. 109, *New pneumatic and certain specialty tires:* Installation of tire placard with certification label.

FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* The petitioner claims the tires rims are within conformity of this standard.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–28138 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0115; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2015 Porsche 918 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2015 Porsche 918 passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2015 Porsche 918 PCs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 29, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared,

and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL), (Registered Importer R–90–005), of Houston, Texas has petitioned NHTSA to decide whether nonconforming 2015 Porsche 918 PCs are eligible for importation into the United States. The vehicles which Wallace Environmental Testing Laboratories, Inc. believes are substantially similar are MY 2015 Porsche 918 PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2015 Porsche 918 PCs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

Wallace Environmental Testing Laboratories, Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 2015 Porsche 918 PCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2015 Porsche 918 PCs, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect,* 103, *Windshield Defrosting and Defogging Systems,* 104, *Windshield Wiping and Washing Systems,* 106, *Brake Hoses,* 109, *New Pneumatic and Certain Specialty Tires,* 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less,* 113, *Hood Latch System,* 114, *Theft Protection,* 116, *Motor Vehicle Brake Fluids,* 118, *Power-Operated Window, Partition, and Roof Panel System,* 124, *Accelerator Control Systems,* 126, *Electronic Stability Control Systems for light vehicles,* 135, *Light Vehicle Brake Systems,* 138, *Tire Pressure Monitoring Systems,* 201, *Occupant Protection in Interior Impact,* 202, *Head Restraints; Applicable at the Manufacturers Option until September 1, 2009,* 203, *Impact Protection for the Driver from the Steering Control System,* 204, *Steering Control Rearward Displacement,* 205, *Glazing Materials,* 206, *Door Locks and Door Retention Components,* 207, *Seating Systems,* 209, *Seat Belt Assemblies,* 210, *Seat Belt Assembly Anchorages,* 212, *Windshield Mounting,* 214, *Side Impact Protection,* 216, *Roof Crush Resistance; Applicable unless a Vehicle is Certified to § 571.216a,* 219, *Windshield Zone Intrusion,* 225, *Child Restraint Anchorage Systems,* 301, *Fuel System Integrity,* and 302, *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays:* Programming of the speedometer and addition of the word ''BRAKE'' to the instrument cluster. FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment:* Replacement of headlamps and taillamps. FMVSS No. 111, *Rear Visibility:* Inscription of the required warning statement on the face of the passenger mirror. FMVSS No. 208, *Occupant Crash Protection:* Addition of knee bolsters. FMVSS No. 401, *Internal Trunk Release:* Addition of a trunk release.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle, near the left windshield pillar, to meet the requirements of 49 CFR part 565, as well as, a reference and certification label added to the left front door post area to meet the requirements of 49 CFR part 567.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–28139 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0101]

Federal Advisory Committee National Emergency Medical Services Advisory Council; Notice of Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Meeting notice—National Emergency Medical Services Advisory Council.

SUMMARY: NHTSA announces a meeting of the National Emergency Medical Services Advisory Council (NEMSAC) to be held at DOT Headquarters in Washington, DC. This notice announces the date, time, and location of the meeting, which will be open to the public, as well as provide opportunities for public input to the NEMSAC. The purpose of NEMSAC, a nationally recognized council of emergency medical services representatives and consumers, is to advise and consult with DOT and the Federal Interagency Committee on Emergency Medical Services (FICEMS) on matters relating to emergency medical services (EMS).

DATES: The NEMSAC meeting will be held on January 14, 2020, from 9 a.m. to 5 p.m. EDT, on January 15, 2020, from 9 a.m. to 12 p.m. EDT and on January 16, 2020 from 9 a.m. to 4 p.m. EDT. Pre-registration is requested no later than January 6, 2020, 5 p.m. EDT. A public comment period will take place on January 14, 2020, between 2 p.m. and 2:30 p.m. EDT, January 15, 2020, between 11 a.m. and 11:30 a.m. EDT and January 16, 2020, between 11 a.m. and 11:30 a.m. EDT. Requests to speak during the meeting must submit a written copy of their remarks to DOT by January 6, 2020. Written comments may be submitted to the committee at any time. If you wish for the committee to review the comments before the meeting, submit them no later than January 6, 2020. Requests for accommodations to a disability must be received by January 6, 2020. Meeting materials will also be available to the public online on or before January 6, 2020.

ADDRESSES: The meetings will be held at the DOT Headquarters, 1200 New Jersey Avenue SE, Washington, DC 20590. Written comments may be submitted by either one of the following methods: (1) You may submit comments by email: *nemsac@dot.gov* or (2) you may submit comments by fax: 202–366–7149.

Teleconference and webcast information for this meeting will be posted on *www.EMS.gov.* Meeting materials will also be available to the public on *www.EMS.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Chaney, DOT, Office of Emergency Medical Services, 1200 New Jersey Avenue SE, NPD–400, Washington, DC 20590, *EricChaney@dot.gov* or 202–366–0257. Please contact Eric for registration and all meeting related inquires.

SUPPLEMENTARY INFORMATION: Notice of the NEMSAC meeting is given under the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2). The NEMSAC is authorized under Section 31108 of the Moving Ahead with Progress in the 21st Century Act of 2012.

Tentative Agenda of the National EMS Advisory Council Meeting

The NEMSAC agenda includes the following:

Tuesday, January 14, 2020 (9 a.m. to 5 p.m. EDT)

(1) Call to Order, Introductions, and Opening Remarks (9 a.m. to 9:30 a.m. EDT)
(2) Approval of September 2019 NEMSAC Meeting Minutes (9:30 a.m. to 9:45 a.m. EDT)
(3) Federal Liaison Update (9:45 a.m. to 10 a.m. EDT)
(4) EMS Personnel Safety (10 a.m. to 10:45 a.m. EDT)
(5) Break (10:45 a.m. to 11 a.m. EDT)
(6) FICEMS Strategic Plan Update/Revision (11 a.m. to 12 p.m. EDT)
(7) Lunch (12 p.m. to 1:15 p.m. EDT)
(8) CMS Emergency Triage, Treat and Transport (ET3) Model (1:15 p.m. to 2 p.m. EDT)
(9) Public Comment (2 p.m. to 2:30 p.m. EDT)
(10) Review of Ongoing NHTSA Projects (2:30 p.m. to 3 p.m. EDT)
(11) Nomenclature of the EMS Profession—White Paper Update (3 p.m. to 4 p.m. EDT)
(12) NFPA 451 Community Health Programs (4 p.m. to 4:45 p.m. EDT)
(13) Review of Action Items (4:45 p.m. to 5 p.m. EDT)

Wednesday, January 15, 2020 (9 a.m. to 5 p.m. EDT)

(1) Reconvene and Instructions (9 a.m. to 9:15 a.m. EDT)
(2) Review of EMS Nomenclature and National EMS Education Standards Revision (9:15 a.m. to 10 a.m. EDT)
(3) FARS Presentation (10 a.m. to 11 a.m. EDT)
(4) Public Comment (11 a.m. to 11:30 a.m. EDT)
(5) NHTSA Updates (11:30 a.m. to 12 p.m. EDT)

Thursday, January 16, 2020 (9 a.m. to 4 p.m. EDT)

(1) Committee Instructions (9 a.m. to 9:15 a.m. EDT)
(2) Committee Reports and Discussion of NEMSAC Recommendations and Advisories for 2019—2020 (9:15 a.m. to 11 a.m. EDT)
(3) Public Comment (11 a.m. to 11:30 a.m. EDT)
(4) Lunch (11:30 a.m. to 12:30 p.m. EDT)
(5) Action on Proposed Advisories (12:30 p.m. to 3:45 p.m. EDT)
(6) Review of Action Items and Wrap-Up (3:45 p.m. to 4 p.m. EDT)

Public Participation: The meeting will be open to the public on a first-come, first served basis, as space is limited. Members of the public who wish to attend in person must register with the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. Members of the public are encouraged to comment directly to the NEMSAC during designated public comment periods. Attendees should plan to arrive 10–15 minutes early to clear security. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 5 minutes. Written comments from members of the public will be distributed to NEMSAC at the meeting.

NHTSA is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact Eric Chaney at the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section with your request by January 10, 2020.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC.

Jon Krohmer,

Associate Administrator, Acting Research and Program Development.

[FR Doc. 2019–28147 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0117; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Years 2017 Through 2019 Mercedes Benz Maybach S600 Pullman Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces the National Highway Traffic Safety Administration (NHTSA) receipt of a petition for a decision that model year (MY) 2017–2019 Mercedes Benz Maybach S600 Pullman passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2017–2019 Mercedes Benz Maybach S600 PCs) and are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 29, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard along with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of

business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Robert Mazurowski, Office of Vehicle Safety Compliance, NHTSA (202–366–1012).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same MY as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice of each petition that it receives in the **Federal Register**, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc., (Registered Importer R–90–007), of Santa Ana, California has petitioned NHTSA to decide whether nonconforming 2017–2019 Mercedes Benz Maybach S600 Pullman PCs are eligible for importation into the United States. The vehicles which G&K Automotive Conversion, Inc. believes are substantially similar are MY 2017–2019 Mercedes Benz Maybach S600 PCs sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS. The S600 Pullman is a limousine based on the S600 sedan and manufactured by BRABUS GmbH.

The petitioner claims that it compared non-U.S. certified MY 2017–2019 Mercedes Benz Maybach S600 Pullman PCs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

G&K Automotive Conversion, Inc. submitted information with its petition intended to demonstrate that non-U.S. certified MY 2017–2019 Mercedes Benz Maybach S600 Pullman PCs, as originally manufactured, conform to many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non-U.S. certified MY 2017–2019 Mercedes Benz Maybach S600 Pullman PCs, as originally manufactured, conform to: FMVSS Nos. 102, *Transmission Shift Position Sequence, Starter Interlock, and Transmission Braking Effect,* 103, *Windshield Defrosting and Defogging Systems,* 104, *Windshield Wiping and Washing Systems,* 106, *Brake Hoses,* 113, *Hood Latch System,* 114, *Theft Protection and Rollaway Prevention,* 116, *Motor Vehicle Brake Fluids,* 118, *Power-Operated Window, Partition, and Roof Panel System,* 124, *Accelerator Control Systems,* 126, *Electronic Stability Control Systems,* 135, *Light Vehicle Brake Systems,* 138, *Tire Pressure Monitoring Systems,* 139, *New Pneumatic Radial Tires,* 201, *Occupant Protection in Interior Impact,* 202, *Head Restraints; Applicable at the Manufacturers Option until September 1, 2009,* 204, *Steering Control Rearward Displacement,* 205, *Glazing Materials,* 206, *Door Locks and Door Retention Components,* 207, *Seating Systems,* 208, *Occupant Crash Protection,* 209, *Seat Belt Assemblies,* 210, *Seat Belt Assembly Anchorages,* 212, *Windshield Mounting,* 214, *Side Impact Protection,* 216, *Roof Crush Resistance; Applicable unless a Vehicle is Certified to § 571.216a,* 219, *Windshield Zone Intrusion,* 225, *Child Restraint Anchorage Systems,* and 302, *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S. certified vehicles are capable of being readily altered to meet the following FMVSS, in the manner indicated:

FMVSS No. 101, *Controls and Displays:* Programming of the speedometer for units of miles per hour. FMVSS No. 108, *Lamps, Reflective Devices and Associated Equipment:* Replacement of headlamps and front and rear side marker assemblies. FMVSS No. 110, *Tire Selection and Rims:* Addition of tire information placard. FMVSS No. 111, *Rear Mirrors:* Inscription of the required warning statement on the face of the passenger mirror. FMVSS No. 301, *Fuel System Integrity:* Inspect and if necessary replace with U.S. companion model components. FMVSS No. 401, *Interior Trunk Release:* Addition of a trunk release.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle, near the left windshield pillar, to meet the requirements of 49 CFR part 565, as well as, a reference and certification label added to the left front door post area to meet the requirements of 49 CFR part 567.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–28140 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0208]

Pipeline Safety: Random Drug Testing Rate; Management Information System Reporting; and Obtaining Drug and Alcohol Management Information System Sign-In Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of calendar year 2020 minimum annual percentage rate for random drug testing, reminder for operators to report contractor Management Information System (MIS) data, and reminder of method for operators to obtain user name and password for electronic reporting.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 50 percent during calendar year 2020. Operators are reminded that drug and alcohol testing information must be submitted for contractors who are performing or are ready to perform

covered functions. For calendar year 2019 reporting, the ''user name'' and ''password'' for the Drug and Alcohol Management Information System (DAMIS) will be available in the PHMSA Portal.

DATES: Effective January 1, 2020, through December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Wayne Lemoi, Drug & Alcohol Program Manager, Office of Pipeline Safety, by phone at 909–937–7232 or by email at *wayne.lemoi@dot.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Calendar Year 2020 Minimum Annual Percentage Rate for Random Drug Testing

Operators of natural gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas and underground natural gas storage facilities must randomly select and test a percentage of all covered employees for prohibited drug use in accordance with 49 CFR part 199. Pursuant to § 199.105(c)(1), the PHMSA minimum annual random drug testing rate for all covered employees is 50 percent. The Administrator can adjust this random drug testing rate based on the reported positive rate in the pipeline industry's random drug tests, which is submitted in operators' annual Management Information System (MIS) reports as required by § 199.119(a). In accordance with § 199.105(c)(3), if the reported positive drug test rate is below 1 percent for 2 consecutive years, the Administrator can reduce the random drug testing rate to 25 percent of all covered employees. In calendar year 2018, the random drug test positive rate for the entire pipeline industry was reported at greater than 1 percent; therefore, the minimum annual random drug testing rate for calendar year 2020 is maintained at 50 percent of all covered employees.

Reminder for Operators To Report Contractor MIS Data

On January 19, 2010, (75 FR 2926) PHMSA published an advisory bulletin notifying operators of the appropriate methodology for the annual collection of contractor MIS drug and alcohol testing data to avoid duplicative reporting when a contractor works for multiple operators. If an operator is required to submit a MIS report in accordance with part 199, that report is not complete until PHMSA receives MIS data for each tested contractor that performed covered functions as defined in § 199.3. As explained in the 2010 Advisory Bulletin, operators must submit operator and contractor employee testing data in separate MIS reports to avoid duplicative reporting and inaccurate data that could affect the positive rate for the entire industry.

Reminder of Method for Operators To Obtain User Name and Password for Electronic Reporting

By early January 2020, the user name and password required for an operator to access DAMIS and enter calendar year 2019 data will be available to all operator staff with access to the PHMSA Portal. Pipeline operators have been submitting reports required by 49 CFR parts 191 and 195 through the PHMSA Portal (*https://portal.phmsa.dot.gov/pipeline*) since 2011. PHMSA determined that distributing information via the Portal would be more effective than the previous mailing process.

When the DAMIS user name and password are available in the PHMSA Portal, all registered users will receive an email to that effect. If operator staff responsible for submitting MIS reports do not receive the DAMIS information, they should coordinate with other registered PHMSA Portal users within their company to obtain the DAMIS user name and password. Registered PHMSA Portal users for an operator typically include operator staff or consultants who submit annual and incident reports through PHMSA F 7000- and 7100-series forms. Operators that have not previously registered staff in the PHMSA Portal for the reporting purposes of parts 191 and 195 can register users by following the instructions at: *https://portal.phmsa.dot.gov/PHMSAPortal2/staticContentRedesign/howto/PortalAccountCreation.pdf.*

Pursuant to §§ 199.119(a) and 199.229(a), operators with more than 50 covered employees, including both operator and contractor staff, are required to submit annual MIS reports. Operators with 50 or fewer total covered employees are required to submit MIS reports only upon written request from PHMSA. If an operator with 50 or fewer total covered employees has submitted an MIS report in or after calendar year 2017, the PHMSA Portal message may state that no MIS report is required for calendar year 2019. If an operator with 50 or fewer covered employees has grown to more than 50 covered employees during calendar year 2019, the PHMSA Portal message will include instructions for how to obtain a DAMIS user name and password for the 2019 calendar year reporting period.

Issued in Washington, DC, on December 19, 2019, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2019–27992 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Federal Motor Carrier Safety Administration, U.S. Department of Transportation.

ACTION: Rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation proposes to rescind a system of records under the Privacy Act of 1974 entitled DOT/FMCSA 006 SAFETYNET. This system of records facilitates authorized sharing of Department of Transportation Federal Motor Carrier Administration records of companies and drivers of commercial motor vehicles and shipping and freight-forwarding companies registered with FMCSA collected and maintained in the Motor Carrier Information Management System (MCMIS).

DATES: Written comments should be submitted on or before January 29, 2020. The Department may publish an amended SORN in light of any comments received. This new system will be effective January 29, 2020.

ADDRESSES: You may submit comments, identified by docket number Docket No. *INSERT: Docket Number,* by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- Fax: 202–493–2251.

Instructions: All submissions received must include the agency name and docket number *insert docket number.* All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments

received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Director, Office of Information Technology, FMCSA, 1200 New Jersey Avenue SW, Washington, DC 20590. For privacy issues, please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Department of Transportation, Washington, DC 20590, (202–366–8135, *privacy@dot.gov*).

SUPPLEMENTARY INFORMATION: FMCSA uses SAFETYNET to share records maintained in the Motor Carrier Information Management System (MCMIS) with FMCSA field offices and state and local law enforcement officials. These records contain information on companies and drivers of commercial motor vehicles and shipping and freight-forwarding companies registered with FMCSA. In addition, some state and or local law enforcement entities may maintain complaint records in their local versions of SAFETYNET, however those records are not federal records and are outside the bounds of the Department's Privacy Act notices. FMCSA does not maintain complaint information in SAFETYNET. MCMIS is the authoritative system of records for these records and is covered by the Privacy Act system of records notice DOT/FMCSA–001, Motor Carrier Information Management System. All records in SAFETYNET are inputs to or duplicate copies of MCMIS records subject to the DOT/FMCSA–001 system of records notice, therefore a separate notice is not required. Records transmitted to MCMIS via SAFETYNET and the authoritative copy received from MCMIS will continue to be updated on a daily basis. The rescindment of this notice ensures that the Department applies the fair information practice principles and Privacy Act protections afforded by the MCMIS notice in a consistent manner.

SYSTEM NAME AND NUMBER:

DOT/FMCSA 006, SAFETYNET.

HISTORY:

71 FR 35727, June 21, 2006.

Issued in Washington, DC.

Claire W. Barrett,

Chief Privacy Officer.

[FR Doc. 2019–28099 Filed 12–27–19; 8:45 am]

BILLING CODE 4901–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2018–0206]

Air Ambulance and Patient Billing Advisory Committee; Notice of Public Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Air Ambulance and Patient Billing Advisory Committee (AAPB Advisory Committee).

DATES: The meeting will be held on January 15, 2020, from 9:30 a.m. to 5:00 p.m., and on January 16, 2020, from 9:00 a.m. to 4:00 p.m. Requests to speak during the meeting must be received by January 8, 2020. Requests to attend the meeting must be received by January 13, 2020. Requests for accommodations of a disability must be received by January 13, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation (DOT), at *robert.gorman@dot.gov* or 202–366–9350. Any committee-related request should be sent to the person listed in this section.

ADDRESSES: The meeting will be held at the DOT Headquarters at 1200 New Jersey Avenue SE, Washington, DC 20590. Copies of the meeting minutes will be available at *https://www.regulations.gov.* After entering the docket number (DOT–OST–2018–0206), click on the link to ''Open Docket Folder'' and choose the document to review. Written materials may be submitted to this docket. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT's West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

The AAPB Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Section 418 of the FAA Reauthorization Act of 2018, to review options to improve the disclosure of charges and fees for air medical services, better inform consumers of insurance options for such services, and protect consumers from balance billing.

II. Agenda

The first meeting of the AAPB Advisory Committee is designed to gather foundational background information on the air ambulance industry, insurance and billing practices, and consumer issues such as disclosure of fees and balance billing. At the meeting, the agenda will cover the following topics:

- Overview of the air ambulance industry;
- Air ambulance costs and billing;
- Insurance and air ambulance payment systems; and
- Disclosure and separation of charges, cost shifting, and balance billing.

III. Public Participation

The meeting will be open to the public on a first-come, first served basis. As space is limited and access to the DOT Headquarters building is controlled for security purposes, members of the public who wish to attend in person must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Oral comments from members of the public joining the meeting may be allowed if time permits. The time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to AAPB Advisory Committee members. Any member of the public may submit a written statement to the committee through the docket at any time.

Issued this 19th day of December, 2019, in Washington, DC.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

[FR Doc. 2019–27943 Filed 12–27–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Beneficial Ownership Requirements for Legal Entity Customers

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on the proposed renewal, without change, to a currently approved information collection relating to beneficial ownership requirements for legal entity customers of covered financial institutions. Under Bank Secrecy Act regulations, covered financial institutions are required to collect, and to maintain records of, the information used to identify and verify the identity of the names of the beneficial owners of their legal entity customers, subject to certain exclusions and exemptions. This request for comment is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before February 28, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2019–0007 and the specific Office of Management and Budget (''OMB'') control number 1506–0070.
- *Mail*: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2019–0007 and OMB control number 1506–0070.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's retrospective regulatory review process, as mandated by Executive Orders 12866 and 13563. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

FinCEN exercises regulatory functions primarily under the Currency and Financial Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the ''Bank Secrecy Act'' (''BSA'').[1] The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[2] Pursuant to this authority, FinCEN may issue regulations requiring financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.''[3] Additionally, FinCEN is authorized to impose regulations to maintain procedures to ensure compliance with the BSA and FinCEN's implementing regulations, and to guard against money laundering, which includes imposing on financial institutions customer due diligence requirements within the anti-money laundering (''AML'') program requirements.[4]

Under 31 CFR 1010.230 covered financial institutions[5] are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of new accounts opened by legal entity customers and to include such procedures in their AML programs. Covered financial institutions may obtain the required identifying information by either obtaining a prescribed certification form from the individual opening the account on behalf of a legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies the accuracy of the information. Covered financial institutions must also maintain a record of the identifying information obtained, and a description of any document relied on, of any non-documentary methods and results of any measures undertaken, and the resolutions of substantive discrepancies.

These requirements will assist law enforcement in financial investigations, advance counterterrorism and broader national security interests, improve financial institutions' ability to assess and mitigate risk, help prevent evasion of targeted financial sanctions, facilitate tax compliance, enhance financial transparency of legal entities, and advance U.S. compliance with international standards and commitments.

II. Paperwork Reduction Act (''PRA'')[6]

Title: 31 CFR 1010.230—Beneficial Ownership Requirements for Legal Entity Customers.

OMB Control Number: 1506–0070.

Form Number: Appendix A to § 1010.230—Certification Regarding Beneficial Owners of Legal Entity Customers.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the regulations contained in 31 CFR 1010.230 that require covered financial institutions to collect, and to maintain records of, the information used to identify and verify the identity of the names of the beneficial owners of their legal entity customers.

Type of Review: Renewal without change of a currently approved information collection.

Affected Public: Business and other for-profit institutions and non-profit institutions.

Frequency: As required.

Burden:

a. Update and maintain beneficial ownership identification procedures: 20 minutes.[7]

b. Customer identification, verification, and review and recordkeeping of the beneficial ownership information: A range of 20 to 40 minutes per legal entity customer (an average of 30 minutes per legal entity customer).

[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

[2] Treasury Order 180–01 (Jul. 1, 2014).

[3] 31 U.S.C. 5311.

[4] 31 U.S.C. 5318(a) and (h).

[5] Covered financial institutions include banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities. *See* 31 CFR 1010.230(f) and 31 CFR 1010.605(e)(1).

[6] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[7] The final rule recognized a burden of 56 hours to develop the initial procedures (40 hours for small entities). (*See* 81 FR 29398, May 11, 2016). Once procedures are developed, an annual burden of 20 minutes is recognized for revisions to and maintenance of such procedures. Covered financial institutions were required to comply with this rule by May 11, 2018, so no burden hours are included in this analysis for the initial development of procedure.

Estimated Number of Respondents: 23,615.[8]

Estimated Total Annual Responses: 8,855,625.[9]

Estimated Recordkeeping Burden: 4,435,685 hours.[10]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Jamal El Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2019–28037 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–02–P

[8] The above Estimated Number of Respondents is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* web page, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary,* December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INUSRANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified,* March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook,* 2018].

[9] Based on research conducted to publish the final rule in 2016, it is estimated that each covered financial institution will open, on average, 1.5 new legal entity accounts per business day. There are 250 business days per year. (23,615 financial institutions × 1.5 accounts per day × 250 business days per year = 8,855,625 new legal entity accounts opened per year).

[10] 8,855,625 new legal entity accounts × 30 minutes per account established ÷ 60 minutes per hour = 4,427,813 burden hours to identify and verify beneficial owners of new legal entity accounts per year. 20 minutes to update and maintain beneficial ownership identification and verification procedures within a financial institution's AML program multiplied by 23,615 covered financial institutions and divided by 60 minutes = 7,872 burden hours annually. The total annual burden hours estimate for this information collection is (4,427,813 + 7,872) 4,435,685.

DEPARTMENT OF THE TREASURY

Fiscal Service

[FISCAL–2019–0002]

RIN 1530–AA20

Surety Companies Doing Business With the United States; Request for Information

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of request for information; request for comment.

SUMMARY: The U.S. Department of the Treasury, Bureau of the Fiscal Service (Fiscal Service) administers the corporate federal surety bond program (''the program''), under which Fiscal Service processes and evaluates applications from companies seeking to underwrite or reinsure federal surety bonds. Fiscal Service is considering modernizing and improving the program. To support this effort, Fiscal Service requests information from stakeholders on these topics, including views regarding the application process for certificates of authority, the data that Fiscal Service should consider, and the analytical methods it should use when evaluating an applicant's financial condition.

DATES: Submit written comments on or before February 13, 2020.

ADDRESSES: You may submit comments, identified by docket FISCAL–2019–0002, using the following methods:

- *Federal eRulemaking Portal: (http://www.regulations.gov).* Follow the instructions on the website for submitting comments.
- *Email: surety.bonds@fiscal.treasury.gov.* Include docket FISCAL–2019–0002 in the subject line of the message.
- *Mail:* Surety Bond Branch, Bureau of the Fiscal Service, 3201 Pennsy Drive, Building E, Landover, MD 20785.

Instructions: All submissions received must refer to Fiscal Service and docket number FISCAL–2019–0002. In general, comments received will be published on *www.regulations.gov* without change, including any business or personal information provided. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Melvin Saunders, at (202) 874–5283 or *melvin.saunders@fiscal.treasury.gov;* or Dwayne Boothe, at (304) 480–5244 or *dwayne.boothe@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: Congress authorized the Secretary of the Treasury (the Secretary) in 31 U.S.C. 9304–9305 to certify a surety company to do business with the United States if the Secretary determines that the company meets certain conditions and is able to carry out its contracts. The Secretary has delegated authority to Fiscal Service to administer the program.

Fiscal Service evaluates the financial condition of companies applying to be certified as a surety or as a reinsurer of federal surety bonds. Fiscal Service issues a ''certificate of authority'' to approved companies. Under the program, Fiscal Service also evaluates companies applying for recognition as admitted reinsurers for excess risk that does not run to the United States. Fiscal Service has published its requirements for companies applying to underwrite or reinsure federal surety bonds and for companies applying to be recognized as admitted reinsurers at 31 CFR part 223, and in annual letters posted to its website at *fiscal.treasury.gov/surety-bonds.* Fiscal Service publishes lists of companies receiving certificates of authority to underwrite or reinsure federal surety bonds, and of those companies recognized as admitted reinsurers, on its website annually. Once a company is certified to underwrite or reinsure federal surety bonds, it must submit quarterly financial reports to Fiscal Service demonstrating that the company remains in good financial standing.

Fiscal Service is exploring ways to modernize and improve how it evaluates the financial condition of companies seeking to underwrite and reinsure federal surety bonds or to act as admitted reinsurers, as well as its requirements for the application or renewal of certificates of authority. A number of changes in the regulation of the insurance industry that have an indirect effect on the program and companies applying for certification (or to be recognized as an admitted

reinsurer) have taken place in the years since Fiscal Service last significantly updated the program's regulatory requirements and its financial analysis methodology. For instance, the passage of the Nonadmitted and Reinsurance Reform Act of 2010 and the adoption by U.S. states of the 2011 amendments to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law and Model Regulation have impacted the form and extent of surety companies' reliance on reinsurers not domiciled in the United States. In 2010, Congress created the Federal Insurance Office (''FIO'') in the Department of the Treasury to, among other things, monitor and report on the regulation of the insurance industry. Additionally, pursuant to the authorities set forth in the Federal Insurance Office Act of 2010, the Department of the Treasury, led by the FIO, and the Office of the United States Trade Representative have negotiated a covered agreement with the European Union, providing for (among other things) the elimination of collateral requirements, under specified conditions, for reinsurers from EU member states assuming business from U.S. ceding insurers. While these and other developments are not the sole impetus for Fiscal Service's consideration of modernizing and improving program requirements, the questions below should be viewed in light of these changes that have occurred in the regulation of the insurance industry. Throughout this process, Fiscal Service will consult and coordinate with FIO.

You are invited to answer the following questions and provide general comments on any other aspect of the program's regulations and requirements. Please include in your comments how any recommended actions would protect the financial interests of the United States and otherwise improve the program.

Request for Comment: While Fiscal Service is particularly interested in responses to the following questions, commenters may supply other information pertaining to Fiscal Service's requirements not explicitly referenced below.

1. Should Fiscal Service consider changing the approach or methodology it uses to value the assets and liabilities of a company applying to be certified as an insurer or reinsurer, or to be recognized as an admitted reinsurer? In particular, please consider commenting on the following items: (a) Admissible versus non-admissible assets; (b) capital requirements; (c) underwriting limitation; and (d) comparison to requirements imposed by relevant regulatory authorities.

2. What different methodologies, if any, should Fiscal Service consider using when evaluating applications from companies that are part of an insurance group's pooling agreement? Please provide your views on whether Fiscal Service should analyze such applicants' financial condition at the group level rather than, or in conjunction with, analysis at the individual company level. Please address the benefits and risks to the federal government of performing the financial analysis at the group level.

3. Should Fiscal Service consider changing the approach or methodology it uses to determine the credit allowed for reinsurance and, if so, what changes should it consider? Please address both reinsurance of federal surety bonds and of non-federal risks, and provide the rationale for any proposed changes.

4. Should Fiscal Service consider changing any aspects of the approach or methodology it uses to determine recognition of a company as an admitted reinsurer? In your response, please address Fiscal Service's treatment of both domestic and alien reinsurers, and discuss the benefits and risks to the federal government of any proposed changes.

5. Should Fiscal Service consider changing the permissible methods, as described in the program's regulations and annual letters published on its website, for limiting risk in excess of a surety company's underwriting limitation? In your response, please address permissible methods for limiting risk in excess of the underwriting limitation relative to both federal surety bonds and to non-federal risks.

6. Should Fiscal Service consider changing the schedule and the documentation required for issuing and renewing certificates of authority and, if so, what changes should it consider? As an example, but not a limitation on the scope of the foregoing question, should Fiscal Service consider issuing certificates of authority that are valid for more than one year based on a company's financial condition? Please address the benefits and risks to the federal government of implementing such proposed changes, including issuing certificates of authority that are valid for more than one year.

7. Please recommend any other revisions to the program regulations as addressed in 31 CFR part 223 or the annual letters published on Fiscal Service's website that are consistent with protecting the federal government, and provide the rationale for those revisions.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2019–28193 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of prompt payment interest rate; Contract Disputes Act.

SUMMARY: For the period beginning January 1, 2020, and ending on June 30, 2020, the prompt payment interest rate is 2⅛ per centum per annum.

DATES: Effective January 1, 2020, to June 30, 2020.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to *PromptPayment@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Attorney-Advisor, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, Sec. 12, Public Law 95–563, 92 Stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.

31 U.S.C. 3902(a). ''The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.'' 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning January 1, 2020, and ending on June 30, 2020, is 2⅛ per centum per annum.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2019–28192 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Treasury Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 29, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Treasury Departmental Officers (DO)

1. Title: Troubled Asset Relief Program—Making Home Affordable Participants.

OMB Control Number: 1505–0216.

Type of Review: Extension without change of a currently approved collection.

Description: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Public Law 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program, Making Home Affordable (MHA) program, under which the Department will use TARP capital to lower the mortgage payments of qualifying borrowers. The Treasury will do this through agreements with mortgage servicers to modify loans on their systems. All servicers were eligible to participate in the program.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 140.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 1,680.

Estimated Time per Response: 187.5 hours for large servicers and 2 hours for small servicers.

Estimated Total Annual Burden Hours: 47,880.

2. Title: Annual Performance Report and Certification for Section 1603: Payments for Specified Renewable Energy Property in Lieu of Tax Credits.

OMB Control Number: 1505–0221.

Type of Review: Extension without change of a currently approved collection.

Description: Authorized under the American Recovery and Reinvestment Act (ARRA), of 2009 (Pub. L. 111–5), the Department of the Treasury is implementing several provisions of the Act, more specifically Division B-Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions. Among these components is a program which requires Treasury, in lieu of a tax credit, to reimburse persons who place in service certain specified energy properties. The collection of information is necessary to properly monitor compliance with program requirements. Applicants for Section 1603 payments commit in the Terms and Conditions that are part of the application to submitting an annual report for five years from the date the energy property is placed in service.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 150,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 150,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 37,000.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 23, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–28143 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 29, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

1. Title: FS Form 2887—Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

OMB Control Number: 1530–0013.

Type of Review: Revision of a currently approved collection.

Description: This collection of forms is used to collect information from individuals requesting enrollment in the Treasury SVC program along with supplemental information for contractors choosing to participate in the program, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts. Disclosure of the information requested on the forms is voluntary; however, failure to furnish the requested information may significantly delay or prevent participation in the Treasury SVC program.

Form: FS Forms 2887, 2889 and 5752.

Affected Public: Individuals and households.

Estimated Number of Respondents: 102,030.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 102,030.

Estimated Time per Response: 10 minutes for FS Forms 2887 & 2889, 1 minute for FS Form 5752.

Estimated Total Annual Burden Hours: 17,001.

2. Title: Release (FS Form 2001).

OMB Control Number: 1530–0053.

Type of Review: Extension without change of a currently approved collection.

Description: It may be necessary for a registered owner/co-owner of savings bonds or a TreasuryDirect account holder to waive a claim as the result of an unauthorized payment to person(s) not entitled and then release the Government of any liability.

Form: FS Form 2001.

Affected Public: Individuals and households.

Estimated Number of Respondents: 25.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 25.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 3.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 23, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–28177 Filed 12–27–19; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review;

Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 29, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Notice 2009–83—Credit for Carbon Dioxide Sequestration Under Section 45Q.

OMB Control Number: 1545–2153.

Type of Review: Extension without change of a currently approved collection.

Description: This notice sets forth interim guidance, pending the issuance of regulations, relating to the credit for carbon dioxide sequestration (CO2 sequestration credit) under § 45Q of the Internal Revenue Code.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 30.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 30.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 180.

2. Title: Disclosure of returns and return information.

OMB Control Number: 1545–2154.

Type of Review: Extension without change of a currently approved collection.

Description: Subject to such requirements and conditions as the Secretary may prescribe by regulation, section 6103 (c) of the Internal Revenue Code authorizes the Internal Revenue Service to disclose a taxpayer's return or return information to such person or persons as the taxpayer may designate in a request for or consent to such disclosure, or to any other person at the taxpayer's request to the extent necessary to comply with the taxpayer's request to such other person for information or assistance. This regulation (§ 301.6103(c)–1), contains the requirements that must be met before, and the conditions under which, the Internal Revenue Service may make such disclosures.

Individuals can use Form 4506T–EZ to request a tax return transcript that includes most lines of the original tax return. The tax return transcript will not show payments, penalty assessments, or adjustments made to the originally filed return. Form 4506T–EZ (SP) is the Spanish translated version of the Form 4506T–EZ. It is also used to request a tax return transcript that includes most lines of the original tax return.

Form: 4506T–EZ, 4506T–EZ (SP).

Affected Public: Individuals and households.

Estimated Number of Respondents: 5,277,136.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 5,277,136.

Estimated Time per Response: 47 minutes.

Estimated Total Annual Burden Hours: 4,143,302.

3. Title: Production Tax Credit for Refined Coal.

OMB Control Number: 1545–2158.

Type of Review: Extension without change of a currently approved collection.

Description: This notice sets forth interim guidance pending the issuance of regulations relating to the tax credit under § 45 of the Internal Revenue Code (Code) for refined coal. Taxpayer must file certification that its refined coal has achieved 'qualified emissions reduction' with its tax return in order to claim the production tax credit for refined coal.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 100.

Estimated Time per Response: 15.

Estimated Total Annual Burden Hours: 1,500.

4. Title: Extended Carryback of Losses to or from a Consolidated Group (TD 9490—Final).

OMB Control Number: 1545–2171.

Type of Review: Extension without change of a currently approved collection.

Description: This document contains final and temporary regulations under section 1502 that affect corporations filing consolidated returns. These regulations contain rules regarding the implementation of section 172(b)(1)(H) within a consolidated group. These regulations also permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition carryback period pursuant to section 172(b)(1)(H) for specific losses attributable to certain acquired members. This project amends § 1.1502–21 to implement the revisions to Code section 172(b)(1)(H), which extend the carryback period for NOLs to five years, enacted by the Worker, Homeownership, and Business Assistance Act of 2009 (''WHBAA'') that the President signed on Nov. 6, 2009 (Pub. L. 111–92).

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 4,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 4,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,000.

5. Title: Form 14417—Reimbursable Agreement—Non-Federal Entities; Form 14417–A—Statistics of Income—User Fee.

OMB Control Number: 1545–2235.

Type of Review: Extension without change of a currently approved collection.

Description: Information collected with this form will be used by the IRS to enter into cost reimbursable agreements with state, local, foreign government, and commercial entities. The authority to perform services on a cost reimbursable basis is contained in Section 6103(p) of the Internal Revenue Code. Performance of services is authorized when consistent with the basic public obligations of the IRS.

Form: 14417, 14417–A.

Affected Public: Businesses or other for-profits, State, local & foreign governments.

Estimated Number of Respondents: 300.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 310.

Estimated Time per Response: 30 minutes for Form 14417 and 1 hour for Form 14417–A.

Estimated Total Annual Burden Hours: 160.

6. Title: Revenue Procedure 141793–11 (Rev. Proc. 2014–49).

OMB Control Number: 1545–2237.

Type of Review: Extension without change of a currently approved collection.

Description: This revenue procedure provides guidance to State housing credit agencies (Agencies) and owners of low-income buildings (Owners) regarding the suspension of certain income limitation requirements under section 42 of the Internal Revenue Code for certain low-income housing tax credit properties affected by major disaster areas declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act).

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 3,500.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,750.

7. Title: Transitional Guidance Under Sections 162(f) and 6050X with Respect To Certain Fines, Penalties, and Other Amounts.

OMB Control Number: 1545–2284.

Type of Review: Revision of a currently approved collection.

Description: The collection covers the new information reporting requirements under IRC 162(f) and new 6050X, which was added by the Tax Cuts and Jobs Act (TCJA).

Generally, no deduction is allowed for any amount paid to, or at the direction of, a government or specified nongovernmental entity for the violation of any law, except in certain cases laid out in the statute. To be deductible under an exception, the Taxpayer must establish that an amount required to be paid is for restitution, remediation or to come into compliance with the law, AND the amount must be specifically identified in the settlement agreement or court order as restitution, remediation or to come into compliance with the law.

Any amount paid or incurred as reimbursement to the Government for the costs of any investigation or litigation are not deductible under one of the exceptions (under prior law, these amounts were often considered compensatory and deductible).

The 2017 Tax Cuts and Jobs Act also enacted IRC section 6050X, which requires government agencies or specified nongovernmental regulatory entities to file certain information returns. Notice 2018–23 provides information for section 6050X and transitional guidance under IRC § 162(f).

Form: 1098–F.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 200.

Frequency of Response: Annually, On occasion.

Estimated Total Number of Annual Responses: 47,200.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 5,664.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 23, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–28111 Filed 12–27–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Funding Availability: Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of per diem funds to eligible entities to provide transitional housing beds or service centers for Veterans who are homeless or at risk for becoming homeless under VA's Homeless Providers GPD Program models. VA expects to fund approximately 11,500 beds and approximately 20 service center applications with this Notice of Funding Availability (NOFA) for applicants who will offer one (1) or a combination of the transitional housing bed models (*i.e.,* Bridge Housing, Low Demand, Hospital-to-Housing, Clinical Treatment and Service-Intensive

Transitional Housing) and for applicants who will offer service centers. Funding is based on a variety of factors including the quantity and quality of applications as well as the availability of funding.

DATES: Applications for grants under the GPD Program must be received by the GPD National Program Office by 4:00 p.m. Eastern Time on March 2, 2020. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour. VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and submit their materials early to avoid the risk of unanticipated delays, computer service outages or other submission-related problems that might result in ineligibility.

ADDRESSES:

For a Copy of the Application Package: The required documentation for applications is outlined under the Application Documentation Required sections of this NOFA. Note: There is an Application Documentation Required section for applications for transitional housing bed models and a separate Application Documentation Required section for applications for service centers. Questions should be referred to the GPD National Program Office at *GPDgrants@va.gov.* For detailed GPD Program information and requirements, see Title 38, Code of Federal Regulations (CFR) part 61 (38 CFR part 61).

Submission of Application Package: Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/gpd.asp.* Applications may not be mailed, emailed or sent by fax. Applications must be received by the GPD National Program Office by 4:00 p.m. Eastern Time on the application deadline date. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a grant application is available on the GPD Program website at: *www.va.gov/homeless/gpd.asp.*

FOR FURTHER INFORMATION CONTACT: Jeffery Quarles, Director, Grant and Per Diem Program (673/GPD), VA National Grant and Per Diem Program Office, 10770 N. 46th Street Suite C–200, Tampa, FL 33617, (813) 979–3570. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: GPD Per Diem Only Grant Program (PDO).

Announcement Type: Initial.

Funding Opportunity Number: VA–GPD–PDO–FY2020.

Catalog of Federal Domestic Assistance Number: 64.024, VA Homeless Providers Grant and Per Diem Program.

I. Funding Opportunity Description

A. *Purpose:* This NOFA announces the availability of per diem funding to 501(c)(3) and 501(c)(19) non-profit organizations, state and local governments, and recognized Indian Tribal governments. Each application must request either transitional housing bed model(s) or service center(s). Although transitional housing applications and service center applications are standalone applications, they will be reviewed, scored and selected for funding together. They will be selected based on their ranked order among all the applications submitted in response to this NOFA.

Transitional Housing Applications

- Applications are limited to up to one (1) transitional housing application per VA Medical Center (VAMC) catchment area per applicant's Employer Identification Number (EIN).
- Applications must include a minimum of five (5) transitional housing beds per model.
- Applications may include any combination of one, some or all transitional housing bed models.
- Choice of a model or combination of models is at the applicant's discretion. Applicants are encouraged to tailor the proposed model(s) to factors such as their own ability and the particular needs of the community.
- All housing model(s), site(s) and beds being proposed by the applicant for the VAMC catchment area must be included within a single application.
- If more than one (1) application per VAMC catchment area per applicant's EIN is received by the due date and time, VA will consider only one (1) application. VA reserves the right to select which application to consider based on the submission dates and times or based on other factors.

Service Center(s) Applications

- Applications are limited to up to one (1) service center application per VAMC catchment area per applicant's EIN.
- Choice of site(s) and service(s) is at the applicant's discretion. Applicants are encouraged to tailor their proposed site(s) and service(s) to factors such as their own ability and the particular needs of the community.
- All service center(s) being proposed by the applicant for the VAMC catchment area must be included within a single application.
- If more than one (1) application per VAMC catchment area per applicant's EIN is received by the due date and time, VA will consider only one (1) application. VA reserves the right to select which application to consider based on the submission dates and times or based on other factors.

Note: Applications for transitional housing beds and applications for service center(s) do not have to include coverage for the entire VAMC catchment area in the application. The coverage area; however, must not exceed the VAMC catchment area identified in the application. If an applicant does not know their VAMC catchment area, they can contact the local medical facility: *https://www.va.gov/directory/guide/allstate.asp* and ask to speak with the Homeless Program.

Applicants agree to meet the applicable requirements of 38 CFR part 61. In addition, all applicants need to demonstrate low barriers to accessing services and have policies and procedures for working with Veterans who relapse.

B. *Definitions:* 38 CFR part 61 contains definitions of terms used in the GPD Program that are applicable to this NOFA.

C. *Eligibility Information:* To be eligible, an applicant must be a 501(c)(3) or 501(c)(19) non-profit organization, state or local government, or recognized Indian Tribal government that meets the requirements in 38 CFR 61.1.

D. *Cost Sharing or Matching:* None.

E. *Authority:* Funding under this NOFA is authorized by 38 U.S.C. 2011, 2012.

F. *Transitional Housing Models and Service Center Descriptions:*

Note: For each of the model descriptions below that have *Required Minimum Performance Metrics/Targets,* targets are set for the initial funding year of this award (October 1, 2020–September 30, 2021). VA may, at its discretion, update these targets during the option year renewal process. Any new targets will be stated in the option year grant agreement.

Bridge Housing

Targeted Population—Homeless Veterans who have been offered and have accepted a permanent housing intervention but are not able to immediately enter the permanent housing. For purposes of this housing model, a Veteran is considered accepted

for a permanent housing intervention if, for example, the Veteran has been accepted for case management as part of the Department of Housing and Urban Development-VA Supportive Housing (HUD–VASH) program even if the Veteran has not yet received the HUD–VASH voucher. Similarly, a Veteran is considered accepted for a permanent housing intervention if, for example, the Veteran has been accepted into a Supportive Services for Veterans Families (SSVF) but has not yet started services. Other permanent housing may also be identified (*e.g.,* purchase of a home, an apartment lease). Applicants should review the availability of the community's permanent housing prior to applying under this model to avoid not being able to move Veterans to permanent housing as quickly as possible.

Model Overview—Bridge housing is intended to be a short-term stay in transitional housing for Veterans with pre-identified permanent housing destinations.

Characteristics & Standards—Goals in the Individual Service Plan (ISP) should be short-term with the focus on the move to permanent housing, rather than the completion of treatment goals. Veterans are expected to receive case management and support, which should be coordinated with the HUD–VASH, SSVF or other available community-based programs. Grantees will assist Veterans with accessing services as needed/requested by the Veteran and must make available to participants a menu of available services.

Length of Stay (LOS) will be individually determined based on need, but in general, is expected to average 90 days.

Admission Criteria—Veterans must have been offered and accepted a permanent housing intervention prior to admission with documentation to be completed within the first 14 days of admission.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing target is 75 percent. Negative exits target is less than 20 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements or leaving the program without consulting staff.

Low Demand

Targeted Population—Homeless Veterans who suffer from mental-health or substance-use problems or who struggle with maintaining sobriety; and Veterans with multiple treatment failures who may have never received treatment services or may have been unsuccessful in traditional housing programs. These Veterans may have not yet fully committed to sobriety and treatment.

Model Overview—Low-Demand housing uses a high-engagement/harm-reduction model to better accommodate chronically homeless Veterans and Veterans who were unsuccessful in traditional treatment settings. Programming does not require sobriety or compliance with mental health treatment as a condition of admission or continued stay. Overall, demands are kept to a minimum; however, services are made widely available and are actively promoted by program staff as needed. The goal is to establish permanent housing in the community, while providing for the safety of staff and residents.

Characteristics & Standards—Project is small in size (typically 20 beds or less). Services must include case management, substance-use, and mental-health treatment. Referrals for benefits are made available as Veterans engage.

Must provide the participant an orientation that sets the expectations of performance for the participant. Must have 24/7, paid, appropriately trained, on-site staffing at the same location as the location of the program participant. (Using resident managers is not allowed.)

Must have a method to monitor participants' and guests' comings and goings.

Must have a system in place for managing contraband.

Must be willing to retain Veterans who commit minor infractions of rules and who cannot and/or will not stop drinking and/or using legal or illegal substances.

Must be committed to keeping the Veterans housed, staying continuously engaged with each Veteran and providing services as needed.

Must have procedures to ensure safety of staff and residents. The grantee agency must participate in calls twice per month and in an annual fidelity assessment process as established by VA.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing target is 60 percent. Negative exits target is less than 20 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements or leaving the program without consulting staff.

Hospital-to-Housing

Targeted Population—Homeless Veterans who are identified and evaluated at inpatient care settings and emergency departments for suitability for direct transfer to a designated GPD program for transitional housing and supportive care. Veterans served under this model must be able to receive healthcare services from VA as a Homeless Patient Aligned Care Team (H–PACT), or other appropriate care team, will facilitate the ongoing care needs while in transitional housing.

Model Overview—Hospital-to-Housing is a model to address the housing and recuperative care needs of homeless Veterans who have been hospitalized.

Characteristics & Standards—Project is small (typically 10 beds or less). Housing sites are expected to be near the referring medical center so that ongoing clinical care, including specialty care, can continue to be provided.

Have a post-discharge care plan as pre-requisite to program placement that addresses ongoing physical, mental health, substance-use disorder and social work needs as well as care management plans to transition the Veteran to permanent housing upon clinical stabilization.

The VA H–PACT, or other appropriate care team, will facilitate and coordinate the ongoing care needs upon transition.

A Memorandum of Understanding (MOU) must be in place with the local VAMC that details participation in the Hospital-to-Housing program. Included in this should be a detailing of acceptance criteria for Veterans being referred from local inpatient care settings and emergency departments, a detailing of how follow-up care with the medical center is organized, and a commitment to engaging enrolled Veterans in permanent housing as part of program objectives.

Admission Criteria—Individual must be functional, able to perform independent Activities of Daily Living (ADL), not require acute detoxification, have no apparent psychosis and have a post discharge plan coordinating care with the VAMC (*e.g.,* H–PACT Team, Mental Health, Substance Abuse).

Required Minimum Performance Metrics/Targets—Discharge to permanent housing target is 65 percent. Negative exits target is less than 20 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements or leaving the program without consulting staff.

Clinical Treatment

Targeted Population—Homeless Veterans with a specific diagnosis related to a substance-use disorder and/or mental-health diagnosis. Veteran actively chooses to engage in clinical services.

Model Overview—Clinically focused treatment is provided in conjunction with services effective in helping homeless Veterans secure permanent housing and increase income through benefits and/or employment.

Characteristics & Standards—Although the programming and services have a strong clinical focus, permanent housing and increased income are a required outcome of the program. Treatment programs must incorporate strategies to increase income and housing attainment.

Individualized assessment, services and treatment plan are tailored to achieve optimal results in a time efficient manner and are consistent with sound clinical practice.

Program stays are to be individualized based upon the ISP for the Veteran (not program driven).

Staff are to be licensed and/or credentialed to perform the substance-use disorder/mental health services provided as directed by state and local law. Treatment services must be provided by the applicant or through contract arrangement. (VA staff cannot be the treatment provider for this model.)

Veterans are offered a variety of treatment service modalities (*e.g.,* individual and group counseling/therapy, family support groups/family therapy, psychoeducation).

Required Minimum Performance Metrics/Targets—Discharge to permanent housing target is 65 percent. Employment of individuals at discharge target is 55 percent. Negative exits target is less than 20 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements or leaving the program without consulting staff.

Service-Intensive Transitional Housing

Targeted Population—Homeless Veterans who choose a supportive transitional housing environment providing services prior to entering permanent housing.

Model Overview—Provides transitional housing and robust services that facilitate individual stabilization, increased income and movement to permanent housing as rapidly as clinically appropriate.

Characteristics & Standards—Scope of services should incorporate tactics to increase the Veteran's income through employment and/or benefits and obtaining permanent housing. Services provided, and strategies used by the applicant will vary based on the individualized needs of the Veteran and resources available in the community. The applicants are encouraged to provide an array of comprehensive services and/or to connect Veterans to resources available in the community. Applicants specify the staffing levels and range of services to be provided. See Funding Limitations section of this NOFA for the maximum number of Service-Intensive beds allowed per application.

Required Minimum Performance Metrics/Targets—Discharge to permanent housing target is 70 percent. Employment of individuals at discharge target is 55 percent. Negative exits target is less than 20 percent. Negative exits are defined as those exits from a GPD program for a violation of program rules, failure to comply with program requirements or leaving the program without consulting staff.

Service Centers

Targeted Population—Homeless Veterans who are seeking assistance with obtaining housing, employment, medical care or benefits.

Model Overview—Provides services and information to engage and aid homeless Veterans obtain housing and services. Veterans in GPD or in Healthcare for Homeless Veterans (HCHV) transitional housing programs are not eligible to be billed under a service center because GPD and HCHV housing programs already include an array of services to facilitate obtaining housing, employment or benefits.

Characteristics & Standards—Scope of services should incorporate tactics to engage and aid the Veteran. Services provided and strategies used by the applicant will vary based on the individualized needs of the Veteran and resources available in the community. Applicants specify the staffing levels and range of services to be provided. See 38 CFR 61.80 for additional information about service centers.

Other

Transition in Place (TIP) grantees do not need to respond to this NOFA. A separate NOFA will be published to announce availability of funding for TIP grants.

II. Award Information

A. *Allocation of Funds:* Awards provided under this NOFA will be for a period of one (1) year, beginning on October 1, 2020, and ending on September 30, 2021, with options for VA to offer up to two (2) additional years dependent upon factors such as: Funding availability, the recipient meeting the performance goals established in the grant agreement, utilization rates of beds or services, statutory and regulatory requirements and the results of the VA inspection. Continuation funding is not guaranteed.

B. *Funding Restrictions:* No part of an award under this NOFA may be used to facilitate capital improvements or to purchase vans or real property. Questions should be directed to VA's GPD National Program Office at the email address listed in the contact section of the NOFA. Applicants may not receive funding to replace funds provided by any Federal, state or local government agency or program to assist homeless persons.

C. *Funding Limitations:*

1. *For all applications:* VA's decisions will be based on factors such as need, geographic dispersion and availability of funding.

2. *For applications for transitional housing bed models:* Applicants are encouraged to consider the need in their community for transitional housing models that are more focused (*i.e.,* Bridge, Low Demand, Hospital-to-Housing and/or Clinical Treatment) over the transitional housing model that is more general (*i.e.,* Service-Intensive). To that end, applicants may request up to 15 Service-Intensive beds per application. If more than 15 Service-Intensive beds are requested within the same application, then at least 60 percent of the additional beds beyond 15 must be for a transitional housing bed model(s) other than Service-Intensive. For example, an applicant applying for 50 total beds must allocate at least 21 of those beds to a housing model(s) that is not Service-Intensive (*i.e.,* 50 total beds requested minus 15 Service-Intensive beds = 35 beds times 60 percent = 21 non-Service-Intensive beds, leaving 14 beds out of the total 50 beds for additional Service-Intensive beds and/or other beds at the applicant's discretion).

A reminder that the minimum number of beds an applicant can request is five (5) beds per transitional housing model. A reminder that a separate application is required per VAMC catchment area per each applicant's EIN. Applicants are encouraged to review their proposed bed numbers carefully to make sure their request meets the requirements of the NOFA.

3. *For applications that include a request for Hospital-to-Housing beds:* Applications that do not include a MOU from the local VAMC will not be

awarded any Hospital-to-Housing beds even if the application is otherwise selected for funding.

4. *For applications for service center(s):* VA expects to fund approximately 20 service center applications based on a variety of factors including the quantity and quality of applications as well as the availability of funding.

III. Application and Submission Information

A. *To Obtain a Grant Application:* Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/gpd.asp.* The required documentation for an application submission is outlined below in the Application Documentation Required section of this NOFA. Standard forms, which must be included as part of a complete application package, may be downloaded directly from VA's GPD Program website at: *www.va.gov/homeless/gpd.asp.* Questions should be referred to the GPD National Program Office at *GPDGrants@va.gov.* For detailed GPD Program information and requirements, see 38 CFR part 61.

B. *Content and Form of Application:* VA is seeking to focus resources to assist Veterans who are homeless or at risk of becoming homeless. If your agency is unclear as to how to apply, contact the GPD National Program Office for clarification prior to submission of any application to ensure it is submitted in the correct format.

Applicants should ensure that they include all required documents in their electronic application submission, carefully follow the format and provide the information requested and described below. Submission of an incorrect, incomplete or incorrectly formatted application package will result in the application being rejected or not funded.

IV. Application Documentation Required for Transitional Housing Bed Models

Note: Refer to section V below for Application Documentation Required for Service Centers.

A. *Standard Forms and budget information:*

1. Application for Federal Assistance (SF–424)

2. *Indirect cost information:* Applicants that have a negotiated indirect cost rate agreement must provide a copy as an attachment to this application if they wish to charge indirect costs to the grant. Applicants without a negotiated indirect cost rate agreement may request the de minimis rate for indirect costs if they meet the definitions and requirements of 2 CFR part 200. All other allowable costs will be considered only if they are direct costs.

B. *Eligibility:* State/local government entities must provide as an attachment to the application a copy of any comments or recommendations by approved state and (areawide) clearinghouses pursuant to Executive Order 12372.

C. *System for Award Management (SAM):* Applicants must provide a current Data Universal Numbering System (DUNS) number, Unique Entity Identifier (UEI) and SAM expiration date.

D. *Project Summary:*

1. Name of the VAMC whose catchment area includes the transitional housing location(s) requested in this application. If requesting multiple sites, all sites must fall within the same VAMC catchment area. If requesting multiple sites, applicants should make sure each proposed site is strongly justified and well developed. The quality of each site will impact the overall score of the application.

2. Name(s) and number(s) of the Continuum of Care (CoC) where the transitional housing requested in this application will be located. If requesting sites in multiple CoCs, applicants should make sure sites in each CoC are strongly justified and well developed. The quality of sites in each CoC will impact the overall score of the application.

3. Number of beds per housing model for which your agency is requesting per diem in this application.

4. Location of housing provided under this application. Identify the address, city, state, zip code + four-digit extension, county, congressional district, the model(s) and number of GPD beds at each location and gender(s) served.

5. Per location, a description of how the facility's participant living space will be configured within the model(s) requested. Include the square footage of the room or bay, the number of beds in that square footage and if the beds will be bunked (*e.g.,* Single room occupancy, 100 square feet, no bunk beds, bridge and service-intensive; Open bay, 900 square feet, 12 beds, 4 sets of bunk beds, service-intensive; Apartments, 1500 square feet, 1, 2, or 3 bedrooms, no bunk beds, bridge). Identify any differences among models, if applicable.

6. Per location, description of any additional populations or types of housing being provided from other non-GPD sources of funding at this location (*e.g.,* children, women, permanent housing, contract care).

E. *Applicant Contact Information:*

1. Location of the administrative office where correspondence can be sent to the Executive Director/President/CEO (no P.O. Boxes). Include complete address, city, state, zip code + four-digit extension, county and congressional district.

2. *Organization Primary Contact:* Include the name, title, phone and email address. Note: This contact is assigned to the organization, not a specific grant award, and is normally someone who signs grant agreements or makes executive decisions for the organization. This is most often the CEO, the President or the Executive Director. Organizations with multiple awards can only have one (1) Organization Contact.

3. *Grant Contact #1:* Include the name, title, phone and email address. Note: This contact is specific to this grant application and may be a Program Manager, Director, Case Manager, Grant Administrator or other position overseeing the GPD grant project.

4. Provide as an attachment to the application a complete listing of your agency's officers of the Board of Directors and each person's address, phone and email address.

5. Describe your participation with the local Homeless Management Information System (HMIS). Background: HMIS is a locally-administered web-based data system used to record and analyze both program and client information at the local CoC level. It is used by Federal partners, including VA, to measure project performance and participate in benchmarking of the national effort to end homelessness. Currently, using HMIS is optional for GPD grantees.

F. *Project Abstract:* In approximately 500 words, provide a brief abstract of the proposed project. As applicable, include a discussion of multiple models, co-located models, multiple sites, multiple CoCs and/or other information relevant to an understanding of the overall project.

G. *Detailed Application Design:* This is the portion of the application that describes your proposed program. VA reviewers will focus on how the detailed application design addresses the areas of outreach, project plan, model specific questions, ability, need and coordination in relation to the selected model(s) including how support services will be coordinated in relationship to the selected model(s). Note: There are some questions that only apply to specific models (*i.e.,* Bridge, Low Demand, Hospital-to-Housing, Clinical Treatment, Service-

Intensive). Applicants applying for these models must include responses to these questions in the application. Note: The word count suggestions below account for space needed for applications with multiple models. It is understood that applications with one or few models generally would use less space than the suggested limit.

VA expects applicants awarded under this NOFA will meet the VA performance metrics for the selected model(s). With those metrics in mind, and in response to the following sections, please include strategies to meet or exceed VA's national metric targets. The requirements in this section are consistent with 38 CFR part 61.

(a) *Outreach (see 38 CFR 61.13(c)):* This is the portion of the application where applicants will discuss how the outreach plan is tailored to the specific model(s) chosen and how services will be provided for Veterans living in places not ordinarily meant for human habitation (*e.g.,* streets, parks, abandoned buildings, automobiles, emergency shelters). Applications will be scored on responses to the following questions:

1. Outreach—In approximately 250 words, describe your agency's plan to conduct outreach, including frequency of outreach, to your selected Veteran population(s) living in places not ordinarily meant for human habitation (*e.g.,* streets, parks, abandoned buildings, automobiles, emergency shelters).

2. Outreach—In approximately 1,000 words, describe per housing model named in Project Summary question IV.D.3, where your organization will target and tailor its outreach efforts to identify appropriate Veterans for this program.

3. Outreach—In approximately 500 words, describe your agency's involvement in the Coordinated Assessment/Entry efforts of the CoC(s) named in Project Summary question IV.D.2. How does the plan fit into each CoC's plan to end homelessness?

(b) Project Plan (see 38 CFR 61.13(b)): VA wishes to provide the most appropriate housing based on the needs of the individual Veteran. Applicants will be asked to answer questions based on the specific model(s) chosen for this application. Applications will be scored on responses to the following questions:

1. Project Plan—In approximately 500 words, describe how you will ensure that homeless Veterans will be offered available permanent housing resources prior to entering the program.

2. Project Plan—In approximately 2,000 words, by housing model named in Project Summary question IV.D.3, provide a list of the supportive services offered. This list should include a brief description of the service; the minimum frequency that the service will be offered; and the job title, including minimum credentials of the individual(s) that will be providing the service.

3. Project Plan—VA places emphasis on lowering barriers to admissions. In approximately 500 words, describe your admission criteria and the specific process for deciding which Veterans are appropriate for admission for each housing model named in Project Summary question IV.D.3.

4. Project Plan—In approximately 500 words, address whether the project will serve mixed gender populations in a single facility and/or individual with children. Provide a listing and explanation of any gender-specific services. Identify any differences among the models, if applicable.

5. Project Plan—In approximately 500 words, describe how the safety, security and privacy of participants will be ensured.

6. Project Plan—In approximately 500 words, provide your agency's ISP methodology and the core items to be addressed in the ISP.

7. Project Plan—In approximately 500 words, describe how, when and by whom participants' progress toward meeting their individual goals will be monitored, evaluated and documented. Include descriptions of your agency's expectations regarding the frequency of progress notes and case conferencing and how this will be documented.

8. Project Plan—In approximately 500 words, describe how permanent affordable housing will be identified, documented in the ISP and be made known to participants who plan on leaving the supportive housing.

9. Project Plan—In approximately 500 words, describe how necessary follow-up services will be provided, for example, how often they will occur and the duration of the follow-up.

10. Project Plan—In approximately 500 words, describe how Veteran participants will have a voice and aid in operating and maintaining the housing (*e.g.,* volunteer time, paid positions, community governance meetings, peer support).

11. Project Plan—In approximately 500 words, if your agency plans to use any subrecipient(s) and/or contractor(s) for operating and/or maintaining the housing, describe the responsibilities of the subrecipient(s) and/or contractor(s).

12. Project Plan—In approximately 500 words, describe program policies regarding a clean and sober environment. Include in the description how participant relapse will be handled and how these policies will impact admission and discharge criteria.

13. Project Plan—In approximately 500 words, provide and describe the type and implementation of the medication control system that will be used in this project (*e.g.,* Medication Management, Medication Monitoring, individual storage). For reference, applicants may review these requirements at: *www.va.gov/homeless/gpd.asp.*

14. Project Plan—In approximately 250 words, describe program polices regarding participant agreements, including any leases and subleases, if used.

15. Project Plan—In approximately 250 words, describe program polices regarding extracurricular fees, resident rent fees or other fees that will be charged.

16. Project Plan—In approximately 500 words, describe how you will aid Veterans who seek increased income or benefits.

17. Project Plan—In approximately 500 words, address how your agency will facilitate the provision of nutritional meals for the Veterans. Be sure to describe how Veterans with little or no income will be assisted.

18. Project Plan—VA puts great emphasis on placing Veterans in the most appropriate housing situation as rapidly as possible. In approximately 500 words, provide a timeline noting specific services that support housing stabilization from admission through exit. Include evidence of coordination of transition services your agency expects to offer.

19. Project Plan—In approximately 250 words, describe how you will facilitate transportation of the Veteran participants with and without income to appointments, employment and supportive services.

(c) *Model Specific Questions:* Applicants must respond to the following questions only for the model(s) named in Project Summary question IV.D.3. Applicants should make sure each proposed model is strongly justified and well developed. The quality of each model will impact the overall score of the application.

1. Bridge Housing Model—The availability of permanent housing options is key to this model. In approximately 500 words, describe how your bridge housing is coordinated with permanent housing resources as part of a Housing First plan for homeless Veterans. Be sure to describe how your project will be coordinated with local HUD–VASH, Housing Coalition/CoC, and/or SSVF programs.

2. Bridge Housing Model—In approximately 250 words, describe the referral to permanent housing process.

3. Bridge Housing Model—In approximately 250 words, describe how ongoing care will be coordinated while in GPD with the local permanent housing providers.

4. Low Demand Model—In approximately 500 words, how will your agency manage a safe environment if a Veteran return to the project impaired? Describe the safe environment including your agency's plan for using resources in a crisis (*e.g.,* a sober lounge, a safe room). Describe how monitoring will be achieved.

5. Low Demand Model—In approximately 250 words, describe how 24/7, paid, appropriately trained, on-site supervision required for this model will be provided. Be sure to discuss coverage during evenings, weekends, holidays and other irregular scheduling times.

6. Low Demand Model—In approximately 250 words, describe the approaches that will be used to keep the Veterans engaged in services.

7. Hospital-to-Housing Model—In approximately 250 words, describe the assessment process for identifying potential candidates.

8. Hospital-to-Housing Model—Because this model depends on referrals from the local VAMC, in approximately 250 words, describe how your agency will coordinate messaging about the availability of services to maximize appropriate referrals.

9. Hospital-to-Housing Model—Applicants for this model must attach to the application an MOU between the local VAMC (*i.e.,* the VAMC Director or the appropriate authorized VAMC representative per the local VAMC's practice) and the applicant. The MOU must demonstrate the local VAMC's detailed participation in the Hospital-to-Housing program. Included in the MOU should be a detailing of acceptance criteria for Veterans being referred from local inpatient care settings and local emergency departments, a detailing of how follow-up care with the VAMC is organized, and a commitment to engaging enrolled Veterans in permanent housing as part of the program. Failure to submit an MOU will result in this model not being approved for funding even if the application is otherwise selected for funding. Applicants are strongly encouraged to allow as much time as possible, and no less than 30 days, for a VAMC to provide an MOU. All application materials must be submitted together in a single package by the due date and time. Any materials arriving separately or late will not be accepted as part of the application.

10. Clinical Treatment Model—In approximately 500 words, describe if the proposed project will provide services to Veterans with substance abuse disorders and/or with mental health diagnoses. Also, describe the approaches used to treat the selected population(s). Include evidence-based approaches when possible. Confirm that VA staff will not be the treatment provider.

11. Clinical Treatment Model—In approximately 500 words, describe how you will ensure that permanent housing and employment/income improvements will occur and lead to successful outcomes.

12. Service-Intensive Model—In approximately 500 words, describe how you will ensure that permanent housing and employment/income improvements will occur and lead to successful outcomes.

(d) Ability (see 38 CFR 61.13): This is the portion of the application where applicants demonstrate experience regarding the selected population(s). Applications will be scored on responses to the following questions:

1. Ability—Provide as an attachment to the application a table or spreadsheet of the staffing plan for this project (see example 1). Do not include resumes.

Example 1

Job title	Brief (1–2 sentence) description of responsibilities	Educational level	Hours per week allocated to GPD project (40 hours equals full-time)	Amount of annual salary allocated to the GPD project	Amount of salary for the full-time position
Case manager	Responsible for working with the Veteran to develop and monitor an individual service plan and to adjust the plan as needed. Coordinates support with other community agencies.	BSW	30 hours	$60,000	$80,000

2. Ability—In approximately 500 words, describe your agency's previous experience assessing and providing for the housing needs of homeless Veterans. If applicable, include a description of previous experience under your chosen model(s) as named in Project Summary question IV.D.3.

3. Ability—In approximately 250 words, describe your agency's ability to get the project started within 180 days from the potential award date. Describe the start-up activities, the timing involved and when the project would be expected to be fully functional.

4. Ability—In approximately 500 words, describe your agency's previous experience in assessing and providing supportive service resources and entitlement benefits to homeless Veterans under your chosen model(s) as named in Project Summary question IV.D.3.

5. Ability—In approximately 500 words, describe your agency's previous experience with evaluating the progress of both individual participants and overall program effectiveness through using quality and performance data to make changes. Describe your agency's experience with meeting past performance goals. Do not include with the application past inspection forms or past VA performance reports.

6. Ability—In approximately 250 words, is your agency accredited and/or licensed to provide clinical services? If yes, describe your agency's accreditation and/or licensure.

7. Ability—In approximately 500 words, describe the organization's staff development plan to help staff gain and maintain the knowledge, skills and abilities to provide culturally competent and relevant related services to people impacted by racial inequity. Include details on how staff will participate in specific training activities.

(e) *Need (see 38 CFR 61.13):* This is the portion of the application where applicants demonstrate that the proposed project is necessary. Applications will be scored on responses to the following questions:

1. Need—In approximately 500 words, describe how this project's proposed model(s) and bed numbers are tailored to the particular needs of the CoC(s). Describe how this project will fit with the strategy of the CoC(s) to end homelessness. Cite reliable data from surveys of homeless populations or other reports or data-gathering mechanisms. Note: If multiple CoCs are named in the Project Summary question IV.D.2, your response here should discuss each of those CoCs.

2. Need—In approximately 500 words, describe with whom you consulted outside of your agency to determine the need for the proposed transitional housing model(s) and bed numbers within the CoC(s). Note: If multiple CoCs are named in the Project Summary question IV.D.2, your response here should discuss each of those CoCs.

(f) *Coordination (see 38 CFR 61.13):* This is the portion of the application where applicants will demonstrate their involvement in the homeless Veteran continuum. Applications will be scored on responses to the following questions:

1. Coordination—In approximately 500 words, describe how your agency is part of an ongoing community-wide planning process to end Veteran homelessness. Note: If multiple CoCs are named in the Project Summary question IV.D.2, your response here should discuss each of those CoCs.

2. Coordination—In approximately 500 words, describe how your process is designed to share information on available resources and reduce duplication among programs that serve homeless Veterans. Note: If multiple CoCs are named in the Project Summary question IV.D.2, your response here must discuss each of those CoCs. Applicants who wish to provide a letter(s) of coordination from the local CoC(s) may attach a letter(s) at the end of the application. Applicants are strongly encouraged to allow as much time as possible, and no less than 30 days, for a CoC to provide a letter of coordination. All application materials must be submitted together in a single package by the due date and time. Any materials arriving separately or late will not be accepted as part of the application.

3. Coordination—In approximately 250 words, describe how your agency consulted directly with the VAMC Director (or the appropriate authorized VAMC representative per the local VAMC's practice) regarding coordination of services for project participants. Provide your plan to assure access to healthcare, case management and other care services. Applicants who wish to provide a letter of coordination from the local VAMC must attach a letter at the end of the application. Applicants are strongly encouraged to allow as much time as possible, and no less than 30 days, for a VAMC to provide a letter of coordination. All application materials must be submitted together in a single package by the due date and time. Any materials arriving separately or late will not be accepted as part of the application.

V. Application Documentation Required for Service Centers

Note: Refer to section IV above for Application Documentation Required for Transitional Housing Bed Models.

A. *Standard Forms and budget information:*

1. Application for Federal Assistance (SF–424)

2. *Indirect cost information:* Applicants that have a negotiated indirect cost rate agreement must provide a copy as an attachment to this application if they wish to charge indirect costs to the grant. Applicants without a negotiated indirect cost rate agreement may request the de minimis rate for indirect costs if they meet the definitions and requirements of 2 CFR part 200. All other allowable costs will be considered only if they are direct costs.

B. *Eligibility:* State/local government entities must provide as an attachment to the application a copy of any comments or recommendations by approved state and (areawide) clearinghouses pursuant to Executive Order 12372.

C. *System for Award Management (SAM):* Applicants must provide a current Data Universal Numbering System (DUNS) number, Unique Entity Identifier (UEI) and SAM expiration date.

D. *Project Summary:*

1. Name of the VAMC whose catchment area includes the service center location(s) requested in this application. If requesting multiple sites, all sites must fall within the same VAMC catchment area. If requesting multiple sites, applicants should make sure each proposed site is strongly justified and well developed. The quality of each site will impact the overall score of the application.

2. Name(s) and number(s) of the CoC(s) of where the service center(s) requested in this application will be located. If requesting sites in multiple CoCs, applicants should make sure sites in each CoC are strongly justified and well developed. The quality of sites in each CoC will impact the overall score of the application.

3. Estimated number of hourly service center visits to be provided annually for all service center(s) for which your agency is requesting per diem in this application.

4. Location of services provided under this application. Identify the address, city, state, zip code + four-digit extension, county, other counties served and congressional district.

E. *Applicant Contact Information:*

1. Location of the administrative office where correspondence can be sent to the Executive Director/President/CEO (no P.O. Boxes). Include complete address, city, state, zip code + four-digit extension, county and congressional district.

2. *Organization Primary Contact:* Include the name, title, phone and email address. Note: This contact is assigned to the organization, not a specific grant award, and is normally someone who signs grant agreements or makes executive decisions for the organization. This is most often the CEO, the President or the Executive Director. Organizations with multiple awards can only have one (1) Organization Contact.

3. *Grant Contact #1:* Include the name, title, phone and email address. Note: This contact is specific to this grant application and may be a Program Manager, Director, Case Manager, Grant Administrator or other position overseeing the GPD grant project.

4. Provide as an attachment to the application a complete listing of your agency's officers of the Board of Directors and each person's address, phone and email address.

5. Describe your participation with the local HMIS. Background: HMIS is a locally-administered web-based data system used to record and analyze both program and client information at the local CoC level. It is used by Federal partners, including VA, to measure project performance and participate in benchmarking of the national effort to end homelessness. Currently, using HMIS is optional for GPD grantees.

F. *Project Abstract:* In approximately 500 words, provide a brief abstract of the proposed project. As applicable, include a discussion of multiple sites, multiple CoCs and/or other information relevant to an understanding of the overall project.

G. *Detailed Application Design:* This is the portion of the application that describes your proposed grant. VA reviewers will focus on how the detailed application design addresses the areas of outreach, project plan, ability, need and coordination in relation to the proposed service center(s) including how support services will be coordinated.

VA expects applicants awarded under this NOFA will meet the standards described in their applications for populations served, services provided and visits annually. See also 38 CFR 61.80 for VA performance requirements for service centers. Keep this in mind when responding to the following sections. The requirements in this section are consistent with 38 CFR part 61.

(a) *Outreach (see 38 CFR 61.13):* This is the portion of the application where applicants will discuss how the outreach plan is tailored to the service center(s) and how services will be provided for Veterans living in places not ordinarily meant for human habitation (*e.g.,* streets, parks, abandoned buildings, automobiles, emergency shelters). Applications will be scored on responses to the following question:

1. Outreach—In 1,000 words, describe your agency's plan to conduct outreach, including frequency of outreach, to Veteran populations living in places not ordinarily meant for human habitation (*e.g.,* streets, parks, abandoned buildings, automobiles, emergency shelters). Include a description of your agency's involvement in the Coordinated Assessment/Entry efforts of the CoC(s) named in Project Summary question V.D.2.

(b) *Project Plan (see 38 CFR 61.13):* VA wishes to provide the most appropriate services based on the needs of the individual Veteran. Applicants seeking a service center(s) should focus on what they are providing in the service center(s). For instance, most service centers do not begin ISPs on drop-in individuals because the focus is on engagement. Instead, applicants could respond by stating how the individual is identified for follow-up or additional service. Applications will be scored on responses to the following questions:

1. Project Plan—In approximately 500 words, describe how you will ensure homeless Veterans will be offered available permanent housing resources prior to entering the program.

2. Project Plan—List the supportive services provided and by whom to help participants achieve residential stability, increase skill level and/or income and become involved in making life decisions that will increase self-determination. In addition to the list, describe in approximately 2,000 words the services, the hours per week the services will be available and the job title of the position that will provide the service.

3. Project Plan—In approximately 500 words, describe how the success of the program will be evaluated on an ongoing basis.

4. Project Plan—In approximately 500 words, describe how the nutritional needs of Veterans will be met.

5. Project Plan—In approximately 500 words, describe how the agency will ensure a clean and sober environment.

6. Project Plan—In approximately 500 words, describe how the proposed project will be implemented in a timely fashion.

7. Project Plan—The success of service centers is predicated upon the engagement of the homeless Veteran community. In approximately 500 words, describe how your agency will engage and influence homeless Veterans in how they will address their housing, physical, medical and mental health needs.

(c) *Ability (see 38 CFR 61.13):* This is the portion of the application where applicants demonstrate experience regarding the selected population(s) or services. Applications will be scored on responses to the following questions:

1. Ability—Provide as an attachment to the application a table or spreadsheet of the staffing plan for this project (see example 2). Do not include resumes.

Example 2

Job Title	Brief (1–2 sentence) description of responsibilities	Educational Level	Hours per week allocated to GPD project (40 hours equals full-time)	Amount of annual salary allocated to the GPD project	Amount of salary for the full-time position
Case manager	Responsible for working with the Veteran to provide supportive services and to adjust the services as needed. Coordinates support with other community agencies..	BSW	30 hours	$60,000	$80,000

2. Ability—In approximately 500 words, describe your agency's previous experience operating a service center.

3. Ability—In approximately 500 words, describe your agency's previous experience assessing and providing supportive services to homeless Veterans. Include a discussion of your ability to facilitate access to job training, benefits, mental health services, substance abuse supports and legal services.

4. Ability—In approximately 500 words, describe the organization's staff development plan to help staff gain and maintain the knowledge, skills and abilities to provide culturally competent and relevant related services to people impacted by racial inequity. Include details on how staff will participate in specific training activities.

(d) *Need (see 38 CFR 61.13):* This is the portion of the application where applicants demonstrate that the proposed project is necessary. Applications will be scored on responses to the following questions:

1. Need—In approximately 500 words, describe how this project is tailored to the particular needs of the CoC(s). Describe how this project will fit with the strategy of the CoC(s) to end homelessness. Cite reliable data from surveys of homeless populations or other reports or data-gathering mechanisms. Note: If multiple CoCs are named in the Project Summary question V.D.2, your response here should discuss each of those CoCs.

2. Need—In approximately 500 words, describe with whom you consulted outside of your agency to determine the need for the proposed services. Note: If multiple CoCs are named in the Project Summary question V.D.2, your response here should discuss each of those CoCs.

(e) *Coordination (see 38 CFR 61.13):* This is the portion of the application where applicants will demonstrate their involvement in the homeless Veteran continuum. Applications will be scored on responses to the following questions:

1. Coordination—In approximately 500 words, describe how your agency is part of an ongoing community-wide

planning process to end Veteran homelessness. Note: If multiple CoCs are named in the Project Summary question V.D.2, your response here should discuss each of those CoCs.

2. Coordination—In approximately 500 words, describe how your agency has coordinated GPD services with other programs offered in the CoC(s) named in the Project Summary question V.D.2.

3. Coordination—In approximately 250 words, describe how your agency consulted directly with the VAMC Director (or the appropriate authorized VAMC representative per the local VAMC's practice) regarding coordination of services for project participants. Provide your plan to assure access to healthcare, case management and other care services. Applicants who wish to provide a letter of coordination from the local VAMC must attach a letter at the end of the application. Applicants are strongly encouraged to allow as much time as possible, and no less than 30 days, for a VAMC to provide a letter of coordination. All application materials must be submitted together in a single package by the due date and time. Any materials arriving separately or late will not be accepted as part of the application.

VI. Application Review Information

A. *Criteria for Grants:* Although transitional housing applications and service center applications are standalone applications, they will be reviewed, scored and selected for funding together based on their ranked order among all the applications submitted in response to this NOFA. Submission of an incorrect, incomplete or incorrectly formatted application package will result in the application being rejected at threshold. Applications that meet threshold will be scored according to the rating criteria described in 38 CFR 61.32.

B. *Review and Selection Process:* The review and selection process may be found at 38 CFR 61.13 and 38 CFR 61.32.

C. *Tie Score:* In the event of a tie score between applications, VA will determine at its discretion how to handle selection decisions (*e.g.,* selecting multiple applications for award, awarding for less than requested).

D. *Funding Actions:* Funding is not guaranteed. Conditionally selected applicants will be asked to submit additional information as necessary according to 38 CFR 61.32. Applicants will be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for the grant award within the specified time, VA may non-select the applicant and may use the funding for another applicant(s). VA may negotiate bed numbers, model(s) and/or service center arrangements with conditionally selected applicants and will incorporate any changes into the grant agreement. VA reserves the right to adjust the amount of a grant or elect not to continue funding for subsequent years. VA reserves the right to make adjustments up or down (*e.g.,* to bed numbers, to housing models, to locations) as needed within the intent of the NOFA based on a variety of factors including the quantity and quality of applications as well as the availability of funding. Upon signature of the grant agreement by the Secretary, or designated representative, final selection will be completed, and the grant funds will be obligated for the funding period.

VII. Award Administration Information

A. *Award Notice:* Although subject to change, the GPD Program Office expects to announce grant awards in the fourth quarter of FY 2020. Awards will be for one (1) year with the possibility of up to two (2) option years. Continuation funding is not guaranteed. VA reserves the right in option years to make adjustments up or down (*e.g.,* to bed numbers, to housing models, to locations) as needed within the intent of the NOFA based on a variety of factors including availability of funding and performance. The initial announcement will be made via news release which will be posted on VA's GPD National Program website at: *www.va.gov/homeless/gpd.asp.* Following the initial announcement, the GPD Office will send notification letters to the grant recipients. Applicants who are not selected will be sent a declination letter.

B. *Administrative and National Policy:* VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor services provided to homeless Veterans and outcomes associated with the services provided under this GPD program. All awardees that are selected in response to this NOFA must meet the requirements of the current edition of the Life Safety Code of the National Fire Protection Association as it relates to their specific facility (38 CFR 61.80). Applicants should note that all facilities are to be protected throughout by an approved automatic sprinkler system unless a facility is specifically exempted under the Life Safety Code. Applicants should consider this when submitting their grant applications as no funds will be made available for capital improvements under this NOFA.

C. Grantees must ensure staff supported by grant funds are trained regarding suicide prevention and how to address situations where Veterans demonstrate suicidal ideation. Standard operating procedures are to be developed, in consultation with your local VA medical facility, surrounding suicide prevention.

D. *Payment:* Per diem will be paid in a method that is in accordance with VA and other Federal fiscal requirements. The per diem payment calculation may be found at 38 CFR 61.33. Awardees will be subject to requirements of this NOFA, GPD regulations, 2 CFR part 200 and other Federal grant requirements. A full copy of the regulations governing the GPD Program is available at the GPD website at: *www.va.gov/homeless/gpd.asp.* Awardees will be required to support their request for payments with adequate fiscal documentation as to project income and expenses. Awardees that have a negotiated indirect cost rate agreement must provide GPD with an updated copy annually or when available.

E. *Reporting:*

1. Upon execution of a grant agreement with VA, grantees will have a liaison appointed from a nearby VAMC to provide oversight and monitor services provided to homeless Veterans in the program.

2. Monitoring will include, at a minimum, a quarterly review of each per diem program's progress toward meeting VA's performance metrics, helping Veterans attain housing stability, adequate income support and self-sufficiency as identified in the application. Monitoring may also include a review of the agency's income and expenses as they relate to this project to ensure payment is accurate and to ensure compliance with program requirements. The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application. All grantees are subject to audits conducted by VA or its representative.

3. *Flexibility of Beds:* For those applicants that are successfully funded for multiple models under this NOFA, VA will allow, without a change of scope, a flex of beds between the applicant's models at the same VAMC. This flex will be up to five (5) beds per grant award. Successful applicants who seek a greater number of flex beds than what is allowed must receive prior written approval from the GPD National Program Office. Bed utilization rates can impact future award decisions in potential option year(s).

4. Each funded program will participate in VA's national program monitoring and evaluation as these procedures will be used to determine successful accomplishment of housing, employment and self-sufficiency outcomes for each per diem-funded program. Note: For each of the model descriptions above that have *Required Minimum Performance Metrics/Targets,* the targets are set for the initial funding year of this award (October 1, 2020–September 30, 2021). VA may, at its discretion, update these targets during the option year renewal process. Any new targets will be stated in the option year grant agreement.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Department of Veterans Affairs, approved this document on December 19, 2019, for publication.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2019–28095 Filed 12–27–19; 8:45 am]

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FEDERAL REGISTER

Vol. 84 Monday,

No. 249 December 30, 2019

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Port of Alaska's Petroleum and Cement Terminal, Anchorage, Alaska; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR027]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Port of Alaska's Petroleum and Cement Terminal, Anchorage, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Port of Alaska (POA) for authorization to take marine mammals incidental to pile driving associated with the construction of a new Petroleum and Cement Terminal (PCT) in Knik Arm, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two successive incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on possible one-year renewals that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 29, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Daly@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review. Under the MMPA, ''take'' is defined as meaning to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the proposed IHA. NMFS' EA will be made available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On November 28, 2018, NMFS received a request from the POA for an IHA to take marine mammals incidental to pile driving associated with the construction of the PCT. On June 19, 2019, the POA submitted a subsequent, after request realizing the project would take two construction seasons (April–November) to complete. Because of this modified construction schedule, the POA submitted a new application on July 19, 2019 and a revised application on August 9, 2019. Although NMFS disagreed with some of the analysis in the application (as described later in this document), we deemed it adequate and complete on August 28, 2019, because it contained all the information necessary for us to conduct our MMPA analysis. The POA submitted a subsequent revised application on October 15, 2019, which is available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* The POA's request is for take of small numbers of six species of marine mammals, by Level B harassment. Four of the species could also be taken by Level A harassment. Neither the POA nor NMFS expects serious injury or mortality to result from this activity; therefore, an IHA is appropriate.

NMFS previously issued IHAs and Letters of Authorization (LOAs) to the POA for pile driving (73 FR 41318, July 18, 2008; 74 FR 35136, July 20, 2009; and 81 FR 15048; March 21, 2016). The POA complied with all the requirements

(*e.g.,* mitigation, monitoring, and reporting) of all previous incidental take authorizations and did not exceed authorized take. Information regarding their monitoring results may be found in the *Effects of the Specified Activity on Marine Mammals and their Habitat* and *Estimated Take* sections.

Description of Proposed Activity

Overview

The POA proposes to construct a new PCT comprised of a pile-supported structure located along the southernmost shoreline of the POA (see Figure 1–1 and Figure 1–2 in the POA's IHA application), as part of its Port of Alaska Modernization Project (PAMP). In general, the PAMP will include construction of new pile-supported wharves and trestles south and west of the existing terminals, with a planned design life of 75 years. The proposed project, the PCT project, is one component of the PAMP.

The PCT project will replace the existing Petroleum Oil Lubricants Terminal which is currently the only bulk cement-handling facility in Alaska and is the primary terminal for receipt of refined petroleum products. The PCT Project will involve new construction of a loading platform, access trestle, and dolphins; and installation of utilities (electricity, water, and communication), petroleum, and cement lines linking the terminal and shore. Ships mooring to the PCT will utilize both breasting dolphins and mooring dolphins. The PCT will be designed to satisfy project-specific seismic performance criteria, allowing the terminal to be quickly restored to service following a major seismic event such as the magnitude 7.0 earthquake that struck Anchorage on November 30, 2018.

The POA will install three breasting dolphins and six mooring dolphins as well as a new loading platform and catwalks. In addition to these permanent structures, temporary access trestles will be installed and subsequently removed. Pile installation will occur in water depths that range from a few feet or dry conditions nearest the shore to approximately 80 feet at the outer face of the loading platform, depending on tidal stage. Various work boats and barges will be utilized to support construction. Work will be completed over two construction seasons (April through November): Phase 1 will occur in 2020 and Phase 2 will occur in 2021.

Dates and Duration

POA anticipates two construction seasons (April–November) will be required to complete the PCT terminal. The POA has requested two IHAs to cover this work. These IHAs correspond with Phase 1 and Phase 2. The POA anticipates 359 hours of pile driving and removal over 127 days in Phase 1 and 229 hours of pile driving and removal over 75 days in Phase 2. For each phase, construction mobilization is planned to commence the first week of April, with the potential to initiate pile installation activities by mid-April. Construction demobilization is planned to occur in November, with the expectation to remove the final temporary piles by the first week of November. Between April and November, piles will be installed and removed during daylight hours only.

Specific Geographic Region

Cook Inlet is a large tidal estuary that exchanges waters at its mouth with the Gulf of Alaska. The inlet is roughly 20,000 square kilometers (km^2; 7,700 square miles [mi^2]) in area, with approximately 1,350 linear kilometers (840 miles) of coastline (Rugh et al. 2000) and an average depth of approximately 100 meters (330 feet). Cook Inlet is generally divided into upper and lower regions by the East and West Forelands. Northern Cook Inlet bifurcates into Knik Arm to the north and Turnagain Arm to the east. The POA is located in the southeastern shoreline of Knik Arm (Figure 1).

Knik Arm is generally considered to begin at Point Woronzof, 7.4 kilometers (4.6 miles) southwest of the POA. From Point Woronzof, Knik Arm extends about 48 kilometers (30 miles) in a north-northeasterly direction to the mouths of the Matanuska and Knik rivers. At Cairn Point, just northeast of the POA, Knik Arm narrows to about 2.4 kilometers (1.5 miles) before widening to as much as 8 kilometers (5 miles) at the tidal flats northwest of Eagle Bay at the mouth of Eagle River, which are heavily utilized by Cook Inlet beluga whales (CIBWs). Approximately 60 percent of Knik Arm is exposed at mean lower low water (MLLW). The intertidal (tidally influenced) areas of Knik Arm, including those at the POA, are mudflats, both vegetated and unvegetated, which consist primarily of fine, silt-sized glacial flour.

The POA's boundaries currently occupy an area of approximately 129 acres. Other commercial and industrial activities related to secure maritime operations are located near the POA on Alaska Railroad Corporation (ARRC) property immediately south of the POA, on approximately 111 acres.

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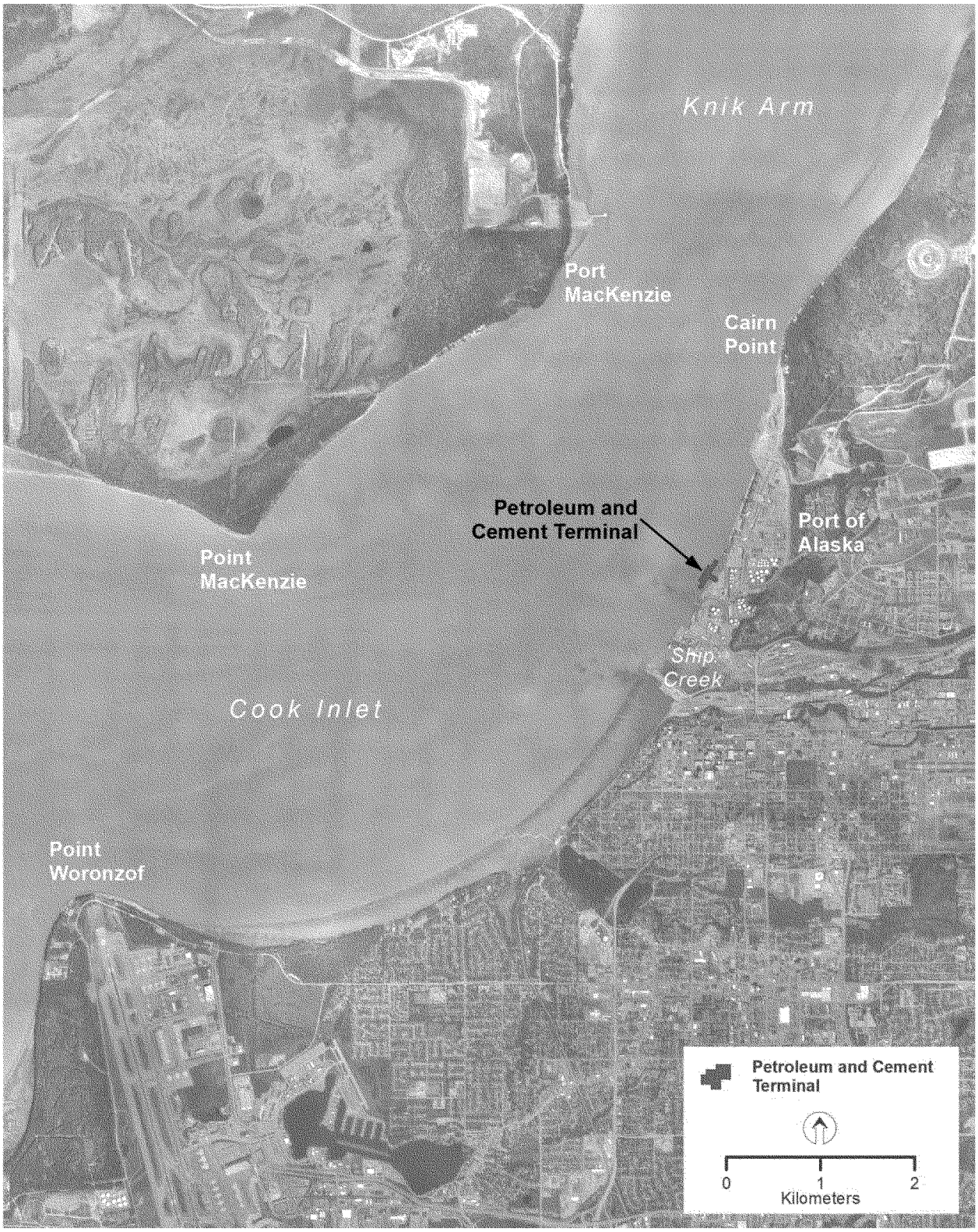

Figure 1. Port of Alaska Location Within Knik Arm, Alaska.

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Detailed Description of Specific Activity

Located within the Municipality of Anchorage on Knik Arm in upper Cook Inlet (see Figure 1–1 in the POA's IHA application), the POA's existing infrastructure and support facilities were constructed largely in the 1960s. Port facilities are substantially past their design life, have degraded to levels of marginal safety, and are in many cases functionally obsolete, especially in

regard to seismic design criteria and condition.

The purpose for the PCT Project is to replace the existing Petroleum Oil Lubricants Terminal (POL 1), the only bulk cement-handling facility in Alaska and the primary terminal for receipt of refined petroleum products. POL 1, built in 1965, is more than 50 years old and consists of 160 wharf pilings that are uncoated, hollow-steel pile. The need for the PCT is based on the heavily deteriorated physical condition of POL 1. It suffers from severe corrosion of its foundation pilings to levels of marginal safety, as evidenced by currently imposed load restrictions. A 2014 pile condition assessment found severe corrosion throughout the facility, with pile wall losses exceeding 67 percent of their original thickness. It also sustained structural damage from a magnitude 7.1 earthquake that struck the area on November 30, 2018. Recent inspections in 2019 have led engineers to confirm that the stress imposed on the already-weakened structure by the November 30 quake caused some piling failure and predisposes the docks to additional failure during future earthquakes. The PCT has been designed to satisfy project-specific seismic performance criteria, allowing the terminal to be quickly restored to service following a major seismic event. POL 1 is functionally obsolete, has exceeded its useful life, and is unlikely to withstand another such earthquake.

The PCT Project includes three major components: (1) A loading platform in Phase 1, (2) an access trestle (bridge-like structure allowing access to the loading platform) in Phase 1, and (3) breasting and mooring dolphins in Phase 2 (see Table 1–1). A temporary work trestle and temporary templates are required for constructing the permanent access trestle in Phase 1, and temporary templates are required for constructing the dolphins in Phase 2. During both Phase 1 and Phase 2, temporary mooring dolphins will be required to accommodate construction barges and to moor construction vessels. Piles will be installed primarily with an impact hammer; however, some vibratory pile driving is also required. A bubble curtain will be deployed to reduce in-water sound levels during PCT construction for impact and vibratory hammer pile installation of 144-, 48-, 36-, and 24-inch plumb (vertical) piles and vibratory hammer removal of 36- and 24-inch plumb piles (all temporary and permanent piles). A bubble curtain will not be deployed during installation and removal of 24-inch battered (installed at an angle, not vertical) piles for the temporary construction work trestle and temporary dolphins due to the difficult geometric application.

All Phase 1 work will occur under the first IHA, while Phase 2 work will occur under the second IHA. Pile sizes and quantities for permanent and temporary components for each phase are shown in Table 1–1; estimates of the time required to install or remove piles for each phase are shown in Table 1–2.

TABLE 1–1—SUMMARY OF PCT PROJECT COMPONENTS AND ACTIVITIES

Type of activity	Location	Phase	Size and type	Total amount or number
Permanent Components				
Permanent pile installation (loading platform)	In water	1	48-inch steel pipe (plumb)	45 piles.
Permanent pile installation (access trestle)	In water	1	48-inch steel pipe (plumb)	26 piles.
Permanent pile installation (breasting and mooring dolphins).	In water	2	144-inch steel pipe (plumb)	9 piles.
Installation of concrete decking on loading platform and main trestle.	Above water	1	Pre-cast panels	About 120 panels.
Catwalks	Above water	2	Prefabricated steel or aluminum trusses with open steel grating.	9 units, totaling 990 feet.
Construction Support and Temporary Components				
Vessel support	In water	1 & 2	Barges and tugs	16 flat deck barges, 2 derrick barges, and 3–4 tugs.
Temporary pile installation (construction work trestle)	In-water	1 1	24-inch steel pipe (plumb) 24-inch steel pipe (battered).	26 piles 10 piles.
Temporary pile installation (dolphin templates)	In-water	2	36-inch steel pipe (plumb)	72 piles.
Temporary pile installation (construction work trestle)	In-water	1	36-inch steel pipe (plumb)	26 piles.
Temporary pile installation (access trestle templates)	In-water	1	24-inch steel pipe (plumb)	36 piles.
Temporary mooring anchor systems	In-water	1 & 2	20,000 pound Danforth anchors.	2 mooring systems.
Temporary derrick barge	In-water	1 & 2	36-inch steel pipe (plumb)	4 piles.
Temporary dolphins for mooring construction vessels	In-water	1 & 2	24-inch steel pipe (plumb) 4-inch steel pipe (battered)	3 dolphins, each with 1 plumb and 2 battered piles (9 piles total).
Installation of Utility, Petroleum, and Cement Lines				
Installation on access trestle and loading platform	Above water, on-dock.	1	Pipelines, various sizes and types.	300–600 linear feet each.

TABLE 1–2—PCT CONSTRUCTION PILE DETAILS AND ESTIMATED EFFORT REQUIRED FOR PILE INSTALLATION AND REMOVAL

Pipe pile diameter	Feature [a]	Number of piles	Total number of piles	Average embedded depth (feet)	Vibratory duration per pile (minutes)	Impact strikes per pile	Estimated total number of hours	Production rate piles per day (range)	Days of installation and removal
Phase 1									
48-inch	Loading Platform	45	71	100	30	2,300 (50 restrikes each for 4 piles).	73	1.5	30.
	Access Trestle	26		130		3,000 (50 restrikes each for 3 piles).	56	(1–3)	17.
36-inch	Temporary Construction Work Trestle.	26	30	115	75	50 restrikes for 10 piles.	33	3 (2–4)	9 installation. 9 removal.
	Temporary Derrick Barge.	4		40	75	NA	5	4	1 installation. 1 removal.
24-inch	Temporary Construction Work Trestle.	26	81	140	75	50 restrikes of 10 piles.	65	3 (2–4)	9 installation 9 removal.
	Temporary Construction Work Trestle, Battered.	10		105	75	NA	25	1.6 (1–2)	6 installation. 6 removal.
	Temporary Construction Access Trestle Template.	36		105	75	NA	90	3 (2–4)	12 installation. 12 removal.
	Temporary Dolphins for mooring construction vessels.	3		50	30	NA	3	3	1 installation. 1 removal.
	Temporary Dolphins for mooring construction vessels, Battered.	6		50	30	NA	9	3	2 installation. 2 removal.
Phase 1 Construction Totals			182 piles				359		127.
Phase 2									
24-inch	Temporary Dolphins for mooring construction vessels.	3	9	50	30	NA	3	3	1 installation. 1 removal.
	Temporary Dolphins for mooring construction vessels, Battered.	6		50	30	NA	9	3	2 installation. 2 removal.
36-inch	Temporary Construction Dolphin Template.	72	76	115	75	NA	180	3 (2–4)	24 installation. 24 removal.
	Temporary derrick barge.	4		40	75	NA	5	4	1 installation. 1 removal.
144-inch	Mooring Dolphin	6	9	140	45 (1 pile)	5,000 (1,500 first day, 3,500 second day).	21	0.5	13.
	Breasting Dolphin	3		135			11	(0.3 or 0.7)	6.
Phase 2 Construction Totals			94 piles				229		75.

The estimated source levels for each pile type and installation method are provided in Table 2. These source levels are from the acoustic monitoring during the POA's 2016 Test Pile Program (TPP) (for 48-in piles) and investigation of existing literature at other locations for non-48-in piles.

TABLE 2—ESTIMATED PILE SOURCE LEVELS WITH AND WITHOUT BUBBLE CURTAINS

Method and pile size	Sound level at 10 m						Data source
Vibratory	Unattenuated db rms			Bubble curtain 7 dB reduction, dB rms			
144-in	178			171			Caltrans 2015.
48-in	168			161			Austin et al 2016.
36-in	166			159			Navy 2015.
24-in	161			154			Navy 2015.
Impact	Unattenuated			Bubble curtain			
	dB rms	dB SEL	dB peak	dB rms	dB SEL	dB peak	
144-in	209	198	220	202	191	213	Caltrans 2015.
48-in	200	187	215	193	180	208	Austin et al. 2016.

Impact	Unattenuated			Bubble curtain			
	dB rms	dB SEL	dB peak	dB rms	dB SEL	dB peak	
36-in	194	184	211	187	177	204	Navy 2015.
24-in	193	181	210	186	174	203	Navy 2015.

Phase 1—Loading Platform and Access Trestle Construction Description

Phase 1 will take place during 2020 and will include construction of the loading platform and access trestle. Construction will be accomplished from two concurrent headings or directions; one marine-side derrick barge with a crane/hammer will be used to construct the loading platform, and a land-side crawler crane/hammer will be used to construct the temporary and permanent access trestle from the shoreline out. The crawler crane will initially advance the temporary work trestle out from the shoreline with a top-down or leap-frog type construction method, and then the crawler crane will work off of the temporary work trestle to construct the permanent trestle all the way out to the loading platform.

For the loading platform, which is supported with 48-inch piles, the contractor will first mobilize the marine-based derrick barge on the seaward side of the platform location and install four temporary mooring piles to stabilize the derrick barge during the construction season. Also, three temporary mooring dolphins will be constructed in the vicinity of the PCT to serve as mooring for construction vessels and barges containing construction materials, and will be removed at the end of the construction season. The derrick barge will host the crane and hammer used to install the permanent loading platform piles and decking. Each of the platform piles will be installed using an impact hammer with a bubble curtain applied. A vibratory hammer would only be used in the infrequent event that an obstruction were encountered while driving the pile that requires removal or repositioning of the pile with a vibratory hammer.

Four of the permanent platform piles will be ''proofed'' to confirm their ability to withstand design loads. Proofing involves approximately 50 impact hammer restrikes over an approximate 10-minute period while instrumentation is attached to the pile during restrike to confirm design conformance. Pile cleanout activities, to prepare the interior of the hollow pile for partial concrete filling, will occur only in the top portion of the pile, but not below mudline. Any material adhered to the top inside of the pile will be removed to prepare for concrete installation, and a soffit form will be inserted into the hollow pile to prevent the closure pour concrete from reaching mudline. Formwork will be constructed around the top of the pile, out of the water, to support placement of a precast concrete cap on top of each pile. The closure pour, where concrete is poured into the pile above the soffit form, connects the pile to the precast pile caps, bonding the pile to the cap. Precast platform panels are then placed on the deck, and additional concrete will be poured on top of the panels to create the platform decking.

For the access trestle, the permanent access trestle construction requires construction of a parallel temporary trestle, installed adjacent to the permanent trestle, from which to advance the temporary piles used for templates and installation of the permanent access trestle piles. While the permanent trestle requires 48-inch piles, the temporary trestle will be constructed using 24- and 36-inch piles.

Initial construction of the temporary work trestle will be advanced first; then, as the work trestle advances water-ward and room is made available to accommodate construction equipment, work will commence on construction of the permanent access trestle coincidentally as the temporary work trestle is advanced water-ward toward the loading platform.

Construction of the trestles will occur concurrently with construction of the loading platform. A crawler crane will be used to install piles for the temporary trestle, building seaward from the shore using a top-down or leap-frog construction method. The crawler crane will advance onto the temporary trestle to complete pile installation and decking for the temporary trestle. Once the first section of temporary trestle is constructed and the crawler crane is advanced, a second crawler crane will advance onto the deck of the temporary trestle and be used to install the first section of template and permanent piles for the permanent access trestle (see *Pile Driving Scenarios,* below).

Three of the permanent trestle piles will be ''proofed'' to confirm their ability to withstand design loads. In addition, it is estimated that 10 each of the 24- and 36-inch temporary work trestle piles may need to be proofed to confirm load capacities for construction equipment. Template piles will stay in place until precast pile caps are placed on the permanent trestle piles following installation. The temporary trestle will stay in place for the entire construction season, and will be used as a work platform for decking installation on the permanent trestle. The temporary trestle decking and piles will be removed at the end of construction activities for Phase 1. Removal is expected to require the same amount of time as installation due to the strong pile setup and resistance conditions related to Knik Arm sediments.

The permanent access trestle is comprised of eight bents (clusters) of three piles each and one bent of two piles at the abutment. The abutment bent (two piles) is located above mean high water on shore and will be installed in the dry. The next three bents are located in the intertidal zone and therefore may or may not be installed in water depending upon the tidal stage (*i.e.,* if the tide is high, they may be in water, but if the tide is low, they will not be in water). The parallel temporary construction trestle will follow the same pattern. For purposes of this analysis, it is assumed that all piles will be driven in water; however, if piles are driven in the dry during actual construction, takes of marine mammals will be assumed not to occur. Also, some of the permanent trestle piles may be started/partially driven with a vibratory hammer when in the dry at the abutment (two piles) and the first three bents (three piles each) in order to set the pile up for impact hammer installation; this condition also is not expected to generate takes. This is a unique situation at this location due to the highly variable tidal conditions and the need to provide initial pile support for impact hammer installation.

To construct the loading platform and permanent access trestle, piles will be installed using an impact hammer to drive through the overburden sediment layer and into the bearing layer, to an average embedded depth of about 100 feet (loading platform piles) and 130 feet (access trestle piles) below the substrate. Installation and removal of all temporary piles, including derrick barge mooring piles, mooring dolphin piles for mooring construction vessels,

temporary access trestle piles, and templates for installation of the permanent access trestle piles, will use vibratory hammer methods. Limited vibratory hammer application may be required for loading platform and permanent trestle piles due to safety reasons, constructability, or if a pile encounters an obstruction.

Phase 2—Mooring and Breasting Dolphins Construction Description

Phase 2 will occur in 2021 and will include construction of the mooring and breasting dolphins. Construction will be accomplished from one marine-based derrick barge with a crane/hammer work station. Similar to Phase 1, the contractor will initially install four temporary mooring piles to stabilize the derrick barge during the construction season. Also, three temporary mooring dolphins will be constructed in the vicinity of the PCT to serve as mooring for construction vessels and barges containing construction materials, and will be removed at the end of the construction season. The derrick barge will host the crane and hammer used to install the mooring and breasting dolphins. Temporary template piles will then be installed to anchor the template that will guide the installation of the permanent dolphin piles at each of the dolphin locations. Template piles will be installed approximately 115 feet into the substrate. Temporary template piles will be driven in a grid formation surrounding the location of each dolphin pile, with a steel framework bolted to the temporary piles to guide dolphin pile installation. The framework includes adjustable components and hydraulic guides that can be adjusted to maintain correct positioning of the dolphins once they are in place. All template piles will be aligned plumb (vertically) and installed and removed using a vibratory hammer due to accuracy requirements for setting the template. All plumb piles will employ a bubble curtain during all pile-driving activity.

Ships mooring to the PCT will utilize both breasting dolphins and mooring dolphins. To meet required structural demands, monopile dolphins are planned for both the breasting and mooring dolphins. Breasting dolphins are designed to assist in the berthing of vessels by absorbing some of the lateral load during vessel impact. Breasting dolphins also protect the loading platform from impacts by vessels. Mooring dolphins, as their name implies, are used for mooring only and provide a place for a vessel to be secured by lines (ropes). Use of mooring dolphins helps control transverse and longitudinal movements of berthed vessels.

In total, nine 144-in mooring and breasting dolphins will be installed at the PCT. Six mooring dolphins will be constructed parallel to and landward of the loading platform face and three breasting dolphins will be installed in alignment with the loading platform (Figure 1–2 in the POA's IHA application). These dolphins will provide for secure ship docking at the terminal. Each mooring and breasting dolphin will be comprised of a single round 144-inch steel pipe pile or monopile, driven to an average embedded depth of about 140 feet below the substrate.

Following temporary pile installation with a vibratory hammer of the dolphin template, held in place with 36-inch piles, the crane will loft the first permanent pile length (approximately 100 feet) and ready it for lowering through the template framework. The crane will have a boom holding the top of the pile as well as a spotter arm lower on the pile to steady the pile for positioning. The pile will then be lowered through the template and readied for pile driving. Impact pile driving will be used to advance the pile to a prescribed depth, at which point pile-driving activity will stop to allow field splicing of the second pile length. Decking will be added to the temporary pile template framework to accommodate welders; no pile driving will be conducted during the welding and testing of the two lengths of pile, as the crane will be holding the second pile length in place. Once the first and second lengths of pile are spliced, pile driving will be reinitiated until the tip is at the prescribed depth. Limited vibratory hammer application may be required on the mooring or breasting dolphin piles for safety reasons or if a pile encounters an obstruction.

Following monopile installation, the superstructure will be installed atop the monopile. A precast concrete mooring cap will be added to the monopile. The caps will be welded to the piles by an embedded steel ring in the precast cap. This activity will not require in-water work or hammer activity. The three breasting dolphins will have fenders installed, which will be attached to the mooring cap and will not require in-water or hammer work.

Once the first and second lengths of pile, ring and mooring cap, and fender, if applicable, are assembled at the first location, the temporary pile template will be removed using a vibratory hammer. The barge will be repositioned to the next location, and the work activity will commence as described above.

One crane will be used for installation of dolphin piles and associated temporary template piles; multiple hammers will not be employed simultaneously. Templates will be re-used at each dolphin location. The crane will alternate between installing template piles, driving dolphin piles, removing template piles, and out-of-water work such as placement of decking, catwalks, and utility racks along the platform and trestle. All terminal utility work is out of the water, and includes installation of pipe racks and utilities along the platform and trestle.

Phases 1 and 2—Temporary Mooring Dolphins

Three temporary mooring dolphins will be installed near the PCT during Phases 1 and 2. Working barges and construction vessels associated with the PCT Project will use the temporary mooring dolphins during PCT construction. Each temporary mooring dolphin will consist of one 24-inch plumb pile and two 24-inch battered piles installed with a vibratory hammer (nine piles total).

Pile-Driving Summary—Phases 1 and 2

Pile installation will occur in water depths that range from a few feet or dry conditions (at low tide) nearest the shore to approximately 24 meters (80 feet) at the outer face of the loading platform at high tide, depending on tidal stage (see Figure 1–3 and Figure 1–4 in the POA's IHA application). Figure 1–3 in the POA's IHA application shows three test piles that were installed in 2016 and are located just water-ward of the face of the PCT loading platform (test piles were removed in 2019). The PCT will be constructed between these three test piles and the shore; for illustrative purposes, the distance from the water-ward edge of the PCT loading platform (general location of test piles) is approximately 30 meters from mean lower low water and 115 meters from mean higher high water.

The pile-driving construction season for Phase 1 is scheduled to commence April 15, 2020, and end the first week of November 2020 (November 7 for purposes of this analysis), with decommissioning occurring during the remainder of November. Decommissioning will not require in-water pile driving. Construction days when piles are not being installed or removed will be devoted to other work such as welding or deck work. The POA is working with their contractor to schedule deck work and other non-pile-

driving work to the maximum extent practicable during the August/September timeframe when beluga whale abundance is higher in Knik Arm. Similarly, the pile driving construction season for Phase 2 is planned to commence in May 2021 and end in early November 2021. The estimated duration for installation and removal of PCT permanent and temporary piles is shown in Table 1–2.

Pile-Driving Scenarios

During Phase 1, the POA expects to utilize three hammers on the job site to expedite construction, including an impact hammer for loading platform construction and an impact hammer and a vibratory hammer for permanent and temporary work trestle construction. In order to mitigate potential impacts to beluga whales and attempt to maximize pile installation activities during the lower density months of occurrence (May–July), the contractor plans to add the third crane with a vibratory hammer to the equipment work mix in order to accelerate construction of the temporary and permanent trestles. This could mean that one vibratory and two impact hammers may be operating at the same time along the trestles for brief periods of time. Use of these hammers could also be coincidental with use of the impact hammer for installation of the platform piles. It is not anticipated that two vibratory hammers will be operating at the same time. Section 6.3.2.3 of the IHA application further details these conditions.

Given the proximity of the platform and trestle, hammers could work very close to each other or as far as 100 meters away from each other. The most likely combinations of piles that could be installed within a day include (1) vibratory hammer installation of 24-inch temporary piles and impact hammer installation of 48-inch permanent trestle or loading platform piles, and (2) vibratory hammer installation of 36-inch temporary piles and impact hammer installation of 48-inch permanent trestle or loading platform piles.

Since only one crane will be operational during Phase 2, there will be no additional pile-driving activity during the impact installation of either the 36-inch temporary template piles or 144-inch monopiles. When using two hammers, one must consider the accumulated energy, and there are fundamental approaches for adjusting source levels to account for the aforementioned scenarios. While two impact hammers could work at the same time, it is unlikely that the hammers would be dropping at the exact same time; therefore, two impact hammers would not necessitate additional acoustic analysis.

Auxiliary Non-Pile-Driving Activities

Other activities necessary to construct the PCT involve the installation of temporary mooring anchor systems, installation of utility lines and pipelines, and use of cranes, tugs, and floating barges. These activities are described in detail in the POA's IHA application. The National Marine Fisheries Service has evaluated these activities for the potential to harass marine mammals. Installation of the mooring anchor systems would not elevate noise levels in Knik Arm; therefore, marine mammal harassment is not a likely outcome. Utility, petroleum, and cement lines will extend between the PCT loading platform and the shore, and will connect with existing onshore infrastructure. The installed utility lines and pipelines will be supported by the access trestle and loading platform above marine waters. No pile installation or removal is associated with these auxiliary activities; therefore, no impacts on the aquatic environment, including elevated in-water noise, are anticipated from the installation of utility lines and pipelines.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

There are six species of marine mammals that may be found in upper Cook Inlet during the proposed pile driving activities. Sections 3 and 4 of the POA's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*). Additional information on beluga whales may be found in NMFS' 2016 Recovery Plan for the Cook Inlet Beluga Whale (*Delphinapterus leucas*), available online at *https://www.fisheries.noaa.gov/resource/document/recovery-plan-cook-inlet-beluga-whale-delphinapterus-leucas.*

Table 3 lists all species with expected potential for occurrence in upper Cook Inlet and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks and all values presented in Table 3 are the most recent available at the time of publication and are available in the 2019 draft SARs (Muto *et al.,* 2019).

TABLE 3—MARINE MAMMAL SPECIES POTENTIALLY OCCURRING IN UPPER COOK INLET, ALASKA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Western North Pacific	E/D; Y	1,107 (0.3, 865, 2006)	3	2.6
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Beluga whale	*Delphinapterus leucas*	Cook Inlet	E/D; Y	327 (0.06, 311, 2016)	0.54	0
Killer whale	*Orcinus orca*	Alaska Resident	-/-; N	2,347 (N/A, 2,347, 2012)	24	1
		Alaska Transient	-/-; N	587 (N/A, 587, 2012)	5.9	1
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena*	Gulf of Alaska	-/-; Y	31,046 (0.214, N/A, 1998)	Undet	72
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Western	E/D; Y	54,267 (N/A, 54,267, 2017)	326	247
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Cook Inlet/Shelikof	-/-; N	28,411 (26,907, N/A, 2018)	807	807

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable because it has not been calculated.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As described below, all six species (comprising six managed MMPA stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

Humpback Whale

Currently, three populations of humpback whales are recognized in the North Pacific, migrating between their respective summer/fall feeding areas and winter/spring calving and mating areas (Baker *et al.* 1998; Calambokidis *et al.* 1997). Although there is considerable distributional overlap in the humpback whale stocks that use Alaska, the whales seasonally found in Cook Inlet are probably of the Central North Pacific stock (Muto *et al.* 2017). The Central North Pacific stock winters in Hawaii and summers from British Columbia to the Aleutian Islands (Calambokidis *et al.* 1997), including Cook Inlet. The humpback whale ESA listing final rule (81 FR 62259, September 8, 2016) established 14 Distinct Population Segments (DPSs) with different listing statuses. The Hawaii DPS is not listed as threatened or endangered under the ESA. NMFS is in the process of reviewing humpback whale stock structure under the MMPA in light of the 14 DPSs established under the ESA.

Humpback whales are encountered regularly in lower Cook Inlet and occasionally in mid-Cook Inlet; however, sightings are rare in upper Cook Inlet. There have been few sightings of humpback whales near the project area. Humpback whales were not documented during POA construction or scientific monitoring from 2005 to 2011 or during 2016 (Cornick and Pinney 2011; Cornick and Saxon-Kendall 2008, 2009; Cornick and Seagars 2016; Cornick et al. 2010, 2011; ICRC 2009a, 2010a, 2011a, 2012; Markowitz and McGuire 2007; Prevel-Ramos et al. 2006). Observers monitoring the Ship Creek Small Boat Launch from August 23 to September 11, 2017 recorded two sightings, each of a single humpback whale, which was presumed to be the same individual. One other humpback whale sighting has been recorded for the immediate vicinity of the project area. This event involved a stranded whale that was sighted near a number of locations in upper Cook Inlet before washing ashore at Kincaid Park in 2017; it is unclear as to whether the humpback whale was alive or deceased upon entering Cook Inlet waters.

Potential concerns include elevated levels of sound from anthropogenic sources (*e.g.,* shipping, military sonars) but no specific habitat concerns have been identified for this stock. Other potential impacts include harmful algal blooms (Geraci et al. 1989), possible changes in prey distribution with climate change, entanglement in fishing gear, ship strikes due to increased vessel traffic (*e.g.,* from increased shipping in higher latitudes and through the Bering Sea with changes in sea-ice coverage), and oil and gas activities. An intentional unauthorized take of a humpback whale by Alaska Natives in Toksook Bay was documented in 2016 (Muto et al., 2019); however, no subsistence use of humpback whales occurs in Cook Inlet.

The overall trend for most humpback whale populations found in U.S. waters is positive and points toward recovery (81 FR 62259; September 8, 2016), indicating that prey availability is not a major problem. However, a sharp decline in observed reproduction and encounter rates of humpback whales from the Central North Pacific stock between 2013 and 2018 has been related to oceanographic anomalies and consequent impacts on prey resources (Cartwright et al. 2019), suggesting that humpback whales are vulnerable to major environmental changes.

Beluga Whale

The CIBW stock is a small, geographically isolated population separated from other beluga populations

by the Alaska Peninsula. The population is genetically distinct from other Alaska populations, suggesting the peninsula is an effective barrier to genetic exchange (O'Corry-Crowe *et al.* 1997). The CIBW population is estimated to have declined from 1,300 animals in the 1970s (Calkins 1989) to about 340 animals in 2014 (Shelden *et al.* 2015). The precipitous decline documented in the mid-1990s was attributed to unsustainable subsistence practices by Alaska Native hunters (harvest of >50 whales per year) (Mahoney and Shelden 2000). In 2006, a moratorium to cease hunting was agreed upon to protect the species.

The Cook Inlet beluga stock remains within Cook Inlet throughout the year (Goetz *et al.* 2012a). NMFS designated two areas, consisting of 7,809 km2 (3,016 mi2) of marine and estuarine environments considered essential for the species' survival and recovery as critical habitat. However, in recent years the range of the beluga whale has contracted to the upper reaches of Cook Inlet because of the decline in the population (Rugh *et al.* 2010). Area 1 of the CIBW critical habitat encompasses all marine waters of Cook Inlet north of a line connecting Point Possession (61.04° N, 150.37° W) and the mouth of Three Mile Creek (61.08.55° N, 151.04.40° W), including waters of the Susitna, Little Susitna, and Chickaloon Rivers below mean higher high water (MHHW). This area provides important habitat during ice-free months and is used intensively by Cook Inlet beluga between April and November (NMFS 2016a). More information on CIBW habitat can be found at *https://www.fisheries.noaa.gov/action/critical-habitat-cook-inlet-beluga-whale*.

Since 1993, NMFS has conducted annual aerial surveys in June, July or August to document the distribution and abundance of beluga whales in Cook Inlet. The collective survey results show that beluga whales have been consistently found near or in river mouths along the northern shores of upper Cook Inlet (*i.e.,* north of East and West Foreland). In particular, beluga whale groups are seen in the Susitna River Delta, Knik Arm, and along the shores of Chickaloon Bay. Small groups had also been recorded farther south in Kachemak Bay, Redoubt Bay (Big River), and Trading Bay (McArthurRiver) prior to 1996 but very rarely thereafter. Since the mid-1990s, most (96 to 100 percent) beluga whales in upper Cook Inlet have been concentrated in shallow areas near river mouths, no longer occurring in the central or southern portions of Cook Inlet (Hobbs *et al.* 2008). Based on these aerial surveys, the concentration of beluga whales in the northernmost portion of Cook Inlet appears to be consistent from June to October (Rugh *et al.* 2000, 2004a, 2005, 2006, 2007). Research reports generated from the surveys can be found at *https://www.fisheries.noaa.gov/alaska/endangered-species-conservation/research-reports-and-publications-cook-inlet-beluga-whales*.

Though CIBWs can be found throughout the inlet at any time of year, they spend the ice-free months generally in the upper Cook Inlet, shifting into the middle and lower Inlet in winter (Hobbs *et al.* 2005). In 1999, one beluga whale was tagged with a satellite transmitter, and its movements were recorded from June through September of that year. Since 1999, 18 beluga whales in upper Cook Inlet have been captured and fitted with satellite tags to provide information on their movements during late summer, fall, winter, and spring. Using location data from satellite-tagged Cook Inlet belugas, Ezer *et al.* (2013) found most tagged whales were in the lower to middle inlet (70 to 100 percent of tagged whales) during January through March, near the Susitna River Delta from April to July (60 to 90 percent of tagged whales) and in the Knik and Turnagain Arms from August to December.

More recently, the Marine Mammal Lab has conducted long-term passive acoustic monitoring demonstrating seasonal shifts in CIBW concentrations throughout Cook Inlet. Castellote et al. (2015) conducted long-term acoustic monitoring at 13 locations throughout Cook Inlet between 2008 and 2015: North Eagle Bay, Eagle River Mouth, South Eagle Bay, Six Mile, Point MacKenzie, Cairn Point, Fire Island, Little Susitna, Beluga River, Trading Bay, Kenai River, Tuxedni Bay, and Homer Spit; the former six stations being located within Knik Arm. In general, the observed seasonal distribution is in accordance with descriptions based on aerial surveys and satellite telemetry: Beluga detections are higher in the upper inlet during summer, peaking at Little Susitna, Beluga River, and Eagle Bay, followed by fewer detections at those locations during winter. Higher detections in winter at Trading Bay, Kenai River, and Tuxedni Bay suggest a broader beluga distribution in the lower inlet during winter.

Beluga whales in Cook Inlet are believed to mostly calve between mid-May and mid-July, and concurrently breed between late spring and early summer (NMFS 2016a), primarily in upper Cook Inlet. The only known observed occurrence of calving occurred on July 20, 2015 in the Susitna Delta area (T. McGuire, pers. comm. March 27, 2017). The first neonates encountered during each field season from 2005 through 2015 were always seen in the Susitna River Delta in July. The photo ID team's documentation of the dates of the first neonate of each year indicate that calving begins in mid-late July/early August, generally coinciding with the observed timing of annual maximum group size. Probable mating behavior of belugas was observed in April and May of 2014, in Trading Bay. Young beluga whales are nursed for two years and may continue to associate with their mothers for a considerable time thereafter (Colbeck et al. 2013).

During the spring and summer, beluga whales are generally concentrated near the warmer waters of river mouths where prey availability is high and predator occurrence is low (Moore *et al.* 2000). Goetz et al. (2012b) modeled habitat preferences using NMFS' 1994–2008 June abundance survey data. In large areas, such as the Susitna Delta (Beluga to Little Susitna Rivers) and Knik Arm, there was a high probability that beluga whales were in larger group sizes. Beluga whale presence also increased closer to rivers with Chinook salmon (*Oncorhynchus tshawytscha*) runs, such as the Susitna River. Movement has been correlated with the peak discharge of seven major rivers emptying into Cook Inlet. Boat-based surveys from 2005 to the present (McGuire and Stephens 2017), and initial results from passive acoustic monitoring across the entire inlet (Castellote *et al.* 2015) also support seasonal patterns observed with other methods. Based on long-term passive acoustic monitoring, seasonally, foraging behavior was more prevalent during summer, particularly at upper inlet rivers, than during winter. Foraging index was highest at Little Susitna, with a peak in July-August and a secondary peak in May, followed by Beluga River and then Eagle Bay; monthly variation in the foraging index indicates belugas shift their foraging behavior among these three locations from April through September.

Despite protection from hunting, this stock continues to decline. The population was declining at the end of the period of unregulated harvest, with the relatively steep decline ending in 1999, coincident with harvest removals dropping from an estimated 42 in 1998 to just 0 to 2 whales per year in 2000 to 2006 (and with no removals after 2006). From 1999 to 2016, the rate of decline of the population was estimated to be 0.4% (SE = 0.6%) per year, with

a 73% probability of a population decline. While from 2006 to 2016, the most recent 10-year period, the rate of decline was estimated to be 0.5% per year, (with a 70% probability of a population decline) (Shelden et al. 2017). No human-caused mortality or serious injury of CIBWs has been recently documented. Other potential threats most likely to result in direct human-caused mortality or serious injury of this stock include ship strikes.

Mortality related to live stranding events, where a beluga whale group strands as the tide recedes, has been regularly observed in upper Cook Inlet. Most whales involved in a live stranding event survive, although some associated deaths may not be observed if the whales die later from live-stranding-related injuries (Vos and Shelden 2005, Burek-Huntington et al. 2015). Between 2013 and 2017, there were reports of approximately 78 beluga whales involved in two known live stranding events, plus one suspected live stranding event with two associated deaths reported. In 2014, necropsy results from two whales found in Turnagain Arm suggested that a live stranding event contributed to their deaths as both had aspirated mud and water. No live stranding events were reported prior to the discovery of these dead whales, suggesting that not all live stranding events are observed. Most live strandings occur in Knik Arm and Turnagain Arm, which are shallow and have big tides. Another source of beluga whale mortality in Cook Inlet is predation by transient-type (mammal-eating) killer whales.

In its Recovery Plan (NMFS, 2016), NMFS identified several threats to CIBWs. Potential threats include: (1) High concern: Catastrophic events (*e.g.,* natural disasters, spills, mass strandings), cumulative effects of multiple stressors, and noise; (2) medium concern: Disease agents (*e.g.,* pathogens, parasites, and harmful algal blooms), habitat loss or degradation, reduction in prey, and unauthorized take; and (3) low concern: Pollution, predation, and subsistence harvest. The recovery plan did not treat climate change as a distinct threat but rather as a consideration in the threats of high and medium concern.

Killer Whale

Two stocks of killer whales may be present in upper Cook Inlet: The Eastern North Pacific Alaska Residents and the Gulf of Alaska, Aleutian Islands, and Bering Sea Transients. Both ecotypes overlap in the same geographic area; however, they maintain social and reproductive isolation and feed on different prey species. During aerial surveys conducted between 1993 and 2004, killer whales were observed on only three flights, all in the Kachemak and English Bay area (Rugh *et al.* 2005). Anecdotal reports of killer whales feeding on belugas in upper Cook Inlet began increasing in the 1990s; several of these sightings and strandings report killer whale predation on beluga Whales.

No killer whales were spotted in the vicinity of the POA during surveys by Funk et al. (2005), Ireland et al. (2005), or Brueggeman et al. (2007, 2008a, 2008b). No killer whale sightings were documented during POA construction or scientific monitoring from 2005 to 2011 or during the 2016 TPP. Very few killer whales, if any, are expected to approach or be near the project area during construction of the PCT.

There are no reports of a subsistence harvest of killer whales in Alaska. Based on currently available data, a minimum estimate of the mean annual mortality and serious injury rate for both the Alaska Residents and transient stocks due to U.S. commercial fisheries is less than 10% of the PBR and, therefore, is considered to be insignificant and approaching zero mortality and serious injury rate. Therefore, neither stock is classified as a strategic stock.

Harbor Porpoise

Harbor porpoises primarily frequent the coastal waters of the Gulf of Alaska and Southeast Alaska (Dahlheim *et al.* 2000, 2008), typically occurring in waters less than 100 m deep (Hobbs and Waite 2010). Harbor porpoise prefer nearshore areas, bays, tidal areas, and river mouths (Dahlheim et al. 2000, Hobbs and Waite 2010). In Alaskan waters, NMFS has designated three stocks of harbor porpoises for management purposes: Southeast Alaska, Gulf of Alaska, and Bering Sea Stocks (Muto *et al.* 2017). Porpoises found in Cook Inlet belong to the Gulf of Alaska Stock, which is distributed from Cape Suckling to Unimak Pass.

Although harbor porpoise have been frequently observed during aerial surveys in Cook Inlet (Shelden *et al.* 2014), most sightings are of single animals, and are concentrated at Chinitna and Tuxedni Bays on the west side of lower Cook Inlet (Rugh *et al.* 2005) and in the upper inlet. The occurrence of larger numbers of porpoise in the lower Cook Inlet may be driven by greater availability of preferred prey and possibly less competition with beluga whales, as belugas move into upper inlet waters to forage on Pacific salmon during the summer months (Shelden *et al.* 2014).

There has been an increase in harbor porpoise sightings in upper Cook Inlet over the past two decades (Shelden et al. 2014). Small numbers of harbor porpoises have been consistently reported in upper Cook Inlet between April and October (Prevel-Ramos et al. 2008). Harbor porpoises have been observed within Knik Arm during monitoring efforts since 2005. During POA construction from 2005 through 2011 and in 2016, harbor porpoises were reported in 2009, 2010, and 2011 (Cornick and Saxon-Kendall 2008, 2009; Cornick and Seagars 2016; Cornick et al. 2010, 2011; Markowitz and McGuire 2007; Prevel-Ramos et al. 2006; Table 4–2). In 2009, a total of 20 harbor porpoises were observed during construction monitoring, with sightings in June, July, August, October, and November. Harbor porpoises were observed twice in 2010, once in July and again in August. In 2011, POA monitoring efforts documented harbor porpoises five times, with a total of six individuals, in August, October, and November at the POA (Cornick et al. 2011). During other monitoring efforts conducted in Knik Arm, there were four sightings of harbor porpoises in 2005 (Shelden et al. 2014), and a single harbor porpoise was observed within the vicinity of the POA in October 2007.

Estimates of human-caused mortality and serious injury from stranding data and fisherman self-reports are underestimates because not all animals strand or are self-reported nor are all stranded animals found, reported, or have the cause of death determined. In addition, the trend of this stock is unknown given data is more than eight years old. Given their shallow water distribution, harbor porpoise are vulnerable to physical modifications of nearshore habitats resulting from urban and industrial development (including waste management and nonpoint source runoff) and activities such as construction of docks and other over-water structures, filling of shallow areas, dredging, and noise (Linnenschmidt et al. 2013). Subsistence users have not reported any harvest from the Gulf of Alaska harbor porpoise stock since the early 1900s (Shelden et al. 2014).

Steller Sea Lion

Steller sea lions inhabiting Cook Inlet belong to the western distinct population segment (WDPS), and this is the stock considered in this analysis. NMFS defines the Steller sea lion WDPS as all populations west of longitude 144° W to the western end of the Aleutian Islands. The most recent comprehensive aerial photographic and land-based surveys of WDPS Steller sea

lions in Alaska were conducted during the 2014 and 2015 breeding seasons (Fritz *et al.* 2015). The WDPS of Steller sea lions is currently listed as endangered under the ESA (55 FR 49204, November 26, 1990) and designated as depleted under the MMPA. NMFS designated critical habitat on August 27, 1993 (58 FR 45269). The critical habitat designation for the WDPS of Steller sea lions was determined to include a 37 km (20 nm) buffer around all major haul outs and rookeries, and associated terrestrial, atmospheric, and aquatic zones, plus three large offshore foraging areas, none of which occurs in the project area. Steller sea lions feed largely on walleye pollock, salmon, and arrowtooth flounder during the summer, and walleye pollock and Pacific cod during the winter (Sinclair and Zeppelin 2002). Except for salmon, none of these are found in abundance in upper Cook Inlet (Nemeth *et al.* 2007).

Within Cook Inlet, Steller sea lions primarily inhabit lower Cook Inlet. However, they occasionally venture to upper Cook Inlet and Knik Arm. Steller sea lions have been observed near the POA in June 2009 (ICRC 2009a) and in May 2016 (Cornick and Seagars 2016). During POA construction monitoring in June of 2009, a Steller sea lion was documented three times (within the same day) in Knik Arm and was believed to be the same individual (ICRC 2009a). In 2016, Steller sea lions were observed on two separate days. On May w, 2016, one individual was sighted. On May 25, 2016, there were five Steller sea lion sightings within a 50-minute period, and these sightings occurred in areas relatively close to one another suggesting they were likely the same animal (Cornick and Seagars 2016). Steller sea lions are likely attracted to the salmon runs; however, their presence is less common in upper Cook Inlet than lower Cook Inlet.

The total estimated annual level of human-caused mortality and serious injury for Western U.S. Steller sea lions in 2012–2016 was 247 sea lions: 35 in U.S. commercial fisheries, 1.2 in unknown (commercial, recreational, or subsistence) fisheries, 2 in marine debris, 5.5 due to other causes (arrow strike, entangled in hatchery net, illegal shooting, Marine Mammal Protection Act (MMPA) authorized research-related), and 203 in the Alaska Native subsistence harvest. However, there are multiple nearshore commercial fisheries which are not observed; thus, there is likely to be unreported fishery-related mortality and serious injury of Steller sea lions.

Several factors may have been important drivers of the decline of the stock. However, there is uncertainty about threats currently impeding their recovery, particularly in the Aleutian Islands. Many factors have been suggested as causes of the steep decline in abundance of western Steller sea lions observed in the 1980s, including competitive effects of fishing, environmental change, disease, contaminants, killer whale predation, incidental take, and illegal and legal shooting (Atkinson et al. 2008, NMFS 2008). A number of management actions have been implemented since 1990 to promote the recovery of the Western U.S. stock of Steller sea lions, including 3-nmi no-entry zones around rookeries, prohibition of shooting at or near sea lions, and regulation of fisheries for sea lion prey species (*e.g.,* walleye pollock, Pacific cod, and Atka mackerel) (Sinclair et al. 2013, Tollit et al. 2017).

Harbor Seal

Harbor seals belonging to the Cook Inlet/Shelikof Strait stock inhabit the coastal and estuarine waters of Cook Inlet and are observed in both upper and lower Cook Inlet throughout most of the year (Boveng et al. 2012; Shelden et al. 2013). Recent research on satellite-tagged harbor seals observed several movement patterns within Cook Inlet (Boveng et al. 2012). In the fall, a portion of the harbor seals appeared to move out of Cook Inlet and into Shelikof Strait, northern Kodiak Island, and coastal habitats of the Alaska Peninsula. The western coast of Cook Inlet had higher usage by harbor seals than eastern coast habitats, and seals captured in lower Cook Inlet generally exhibited site fidelity by remaining south of the Forelands in lower Cook Inlet after release (Boveng et al. 2012).

The presence of harbor seals in upper Cook Inlet is seasonal. Harbor seals are commonly observed along the Susitna River and other tributaries within upper Cook Inlet during eulachon and salmon migrations (NMFS 2003). The major haulout sites for harbor seals are located in lower Cook Inlet with fewer sites in upper Cook Inlet (Montgomery et al. 2007). In the project area (Knik Amr), harbor seals tend to congregate near the mouth of Ship Creek (Cornick et al. 2011; Shelden et al. 2013), likely foraging on salmon and eulachon runs. Approximately 138 harbor seals were observed during previous POA monitoring with sightings ranging from 3 individuals in 2008 to 59 individuals in 2011 (see Table 4–1 in POA's application).

The most current population trend estimate of the Cook Inlet/Shelikof Strait stock is approximately −111 seals per year, with a probability that the stock is decreasing of 0.609 (Muto et al., 2015). The estimated level of human-caused mortality and serious injury for this stock is 234 seals, of which 233 seals are taken for subsistence uses. Additional potential threats most likely to result in direct human-caused mortality or serious injury for all stocks of harbor seals in Alaska include unmonitored subsistence harvests, incidental takes in commercial fisheries, and illegal shooting. Disturbance by cruise vessels is an additional threat for harbor seal stocks that occur in glacial fjords (Jansen et al. 2010, 2015; Matthews et al. 2016). The average annual harvest of this stock of harbor seals between 2004 and 2008 was 233 seals per year. The annual harvest in 2014 was 104 seals (Muto et al., 2019).

In addition, sea otters (*Enhydra lutris*) may be found in Cook Inlet. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Six marine mammal species (four cetacean and two pinniped (one otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 3. Of the cetacean species that may be present, one is classified as a low-frequency cetacean (*i.e.,* all mysticete species), two are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources—The primary relevant stressor to marine mammals from the proposed activity is the introduction of noise into the aquatic environment; therefore, we focus our impact analysis on the effects of anthropogenic noise on marine mammals. To better understand the potential impacts of exposure to pile driving noise, we describe sound source characteristics below. Specifically, we look at the following two ways to characterize sound: by its temporal (*i.e.,* continuous or intermittent) and its pulse (*i.e.,* impulsive or non-impulsive) properties. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005), while intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Impulsive sounds, such as those generated by impact pile driving, are typically transient, brief (<1 sec), broadband, and consist of a high peak pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998). The majority of energy in pile impact pulses is at frequencies below 500 Hz. Impulsive sounds, by definition, are intermittent. Non-impulsive sounds, such as those generated by vibratory pile driving, can be broadband, narrowband or tonal, brief or prolonged, and typically do not have a high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998). Non-impulsive sounds can be intermittent or continuous. Similar to impact pile driving, vibratory pile driving generates low frequency sounds. Vibratory pile driving is considered a non-impulsive, continuous source. Discussion on the appropriate harassment threshold associated with these types of sources based on these characteristics can be found in the *Estimated Take* section.

Potential Effects of the Specified Activity—In general, the effects of sounds from pile driving to marine mammals might result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The potential for and magnitude of these effects are dependent on several factors, including received characteristics (*e.g.,* age, size, depth of the animal during exposure); the energy needed to drive the pile (usually related to pile size, depth driven, and substrate), the standoff distance between the pile and receiver; and the sound propagation properties of the environment.

Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (*e.g.,* sand) absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock) which may reflect the acoustic wave. Soft porous substrates also likely require less time to drive the pile, and possibly less forceful equipment, which ultimately decrease the intensity of the acoustic source.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds

with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that POA's activities would result in such effects (see below for further discussion).

NMFS defines a noise-induced threshold shift (TS) as ''a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level'' (NMFS, 2016). The amount of threshold shift is customarily expressed in dB (ANSI 1995, Yost 2007). A TS can be permanent (PTS) or temporary (TTS). As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral). When analyzing the auditory effects of noise exposure, it is often helpful to broadly categorize sound as either impulsive—noise with high peak sound pressure, short duration, fast rise-time, and broad frequency content—or non-impulsive. When considering auditory effects, vibratory pile driving is considered a non-impulsive source while impact pile driving is treated as an impulsive source.

Permanent Threshold Shift—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see NMFS 2018 for review).

Temporary Threshold Shift—NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Finneran 2014 for a review), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002).

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Schlundt et al. (2000) performed a study exposing five bottlenose dolphins and two belugas (same individuals as Finneran's studies) to intense 1 second tones at different frequencies. The resulting levels of fatiguing stimuli necessary to induce 6 dB or larger masked TTSs were generally between 192 and 201 dB re: 1 microPascal (μPa). Dolphins began to exhibit altered behavior at levels of 178–193 dB re: 1μPa and above; belugas displayed altered behavior at 180–196 dB re: 1 μPa and above. At the conclusion of the study, all thresholds were at baseline values.

There are a limited number of studies investigating the potential for cetacean TTS from pile driving and only one has elicited a small amount of TTS in a single harbor porpoise individual (Kastelein et al., 2015). However, captive bottlenose dolphins and beluga whales have exhibited changes in behavior when exposed to pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one hammer strike is expected to be lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa^2-s) in the aforementioned experiment (Finneran *et al.,* 2002). Results of these studies suggest odontocetes are susceptible to TTS from pile driving, but that they seem to recover quickly from at least small amounts of TTS.

Behavioral Harassment—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors

(*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark 2000; Costa *et al.,* 2003; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.* 2001; Nowacek *et al.* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales (Eubalaena glacialis) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (Eschrictius robustus) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other

avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.,* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Specific to CIBWs, we have several years of marine mammal monitoring data demonstrating the behavioral responses to pile driving at the POA. Previous pile driving activities range from the installation and removal of sheet pile driving to installation of 48-in pipe piles with both vibratory and impact hammers. Kendell and Cornick (2016) provide a comprehensive overview of four years of scientific marine mammal monitoring conducted during the POA's Expansion Project. These were observations made independent of pile driving activities (*i.e.,* not construction based PSOs). The authors investigated beluga whale behavior before and during pile driving activity at the POA. Sighting rates, mean sighting duration, behavior, mean group size, group composition, and group formation were compared between the two periods. A total of about 2,329 h of sampling effort was completed across 349 d from 2005 to 2009. Overall, 687 whales in 177 groups were documented during the 69 days that whales were sighted. A total of 353 and 1,663 h of pile driving activity took place in 2008 and 2009, respectively. There was no relationship between monthly beluga whale sighting rates and monthly pile driving rates ($r = 0.19$, $p = 0.37$). Sighting rates before ($n = 12$; 0.06 ± 0.01) and during ($n = 13$; 0.01 ± 0.03) pile driving activity were not significantly different. However, sighting duration of beluga whales decreased significantly during pile driving (39 ± 6 min before and 18 ± 3 min during). There were also significant differences in behavior before versus during pile driving. Beluga whales primarily traveled through the study area both before and during pile driving; however, traveling increased relative to other behaviors during pile driving activity. Suspected feeding decreased during pile driving although the sample

size was low as feeding was observed on only two occasions before pile driving and on zero occasions during pile driving. Documentation of milling began in 2008 and was observed on 21 occasions. No acute behavioral responses were documented. Mean group size decreased during pile driving; however, this difference was not statistically significant. There were significant differences in group composition before and during pile driving ship between monthly beluga whale sighting rates and monthly pile driving rates with more white (*i.e.,* older) animals being present during pile driving.

Acoustically, Kendall et al. (2013) only recorded echolocation clicks and no whistles or noisy vocalizations near construction activity at the POA. Beluga whales have been occasionally documented to forage around Ship Creek (south of the POA) but, during pile driving, may choose to move past the POA to other, potentially richer, feeding areas further into Knik Arm (*e.g.,* Six Mile Creek, Eagle River, Eklutna River). These locations contain predictable salmon runs (ADFG, 2010), an important food source for CIBWss (NMFS1), and the timing of these runs has been correlated with beluga whale movements into the upper reaches of Knik Arm (Ezer et al., 2013).

Auditory Masking

Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Masking occurs at the frequency band which the animals utilize so the frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Pile driving generates low frequency sounds; therefore, mysticete foraging is likely more affected than odontocetes given very high frequency echolocation clicks (typically associated with odontocete foraging) are likely unmasked to any significant degree. However, lower frequency man-made sounds may affect communication signals when they occur near the sound band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Moreover, even within a given species, different types of man-made noises may results in varying degrees of masking. For example, Erbe et al. (1999) and Erbe (2000), analyzed the effect of masking of beluga calls by exposing a trained beluga to icebreaker propeller noise, an icebreaker's bubbler system, and ambient Arctic ice cracking noise, and found that the latter was the least problematic for the whale detecting the calls. Sheifele et al. (2005) studied a population of belugas in the SLE to determine whether beluga vocalizations showed intensity changes in response to shipping noise. This type of behavior has been observed in humans and is known as the Lombard vocal response (Lombard 1911). Sheifele et al. (2005) demonstrated that shipping noise did cause belugas to vocalize louder. The acoustic behavior of this same population of belugas was studied in the presence of ferry and small boat noise. Lesage et al. (1999) described more persistent vocal responses when whales were exposed to the ferry than to the small-boat noise. These included a progressive reduction in calling rate while vessels were approaching, an increase in the repetition of specific calls, and a shift to higher frequency bands used by vocalizing animals when vessels were close to the whales. The authors concluded that these changes, and the reduction in calling rate to almost silence, may reduce communication efficiency which is critical for a species of a gregarious nature. However, the authors also stated that because of the gregarious nature of belugas, this ''would not pose a serious problem for intraherd communication'' of belugas given the short distance between group members, and concluded a noise source would have to be very close to potentially limit any communication within the beluga group (Lesage et al. 1999). However, increasing the intensity or repetition rate, or shifting to higher frequencies when exposed to shipping noise (from merchant, whale watching, ferry and small boats), is indicative of an increase of energy costs (Bradbury and Vehrencamp 1998).

Marine mammals in Cook Inlet are continuously exposed to anthropogenic noise which may lead to some habituation but is also a source of masking. A subsample (8,756 hours) of the acoustic recordings collected by the Cook Inlet Beluga Acoustics research program in Cook Inlet, Alaska, from July 2008 to May 2013, were analyzed to describe anthropogenic sources of underwater noise, acoustic characteristics, and frequency of occurrence and evaluate the potential for acoustic impact to Cook Inlet belugas. As described in Castellote et al. (2016), a total of 13 sources of noise were identified: Commerical ship, dredging, helicopter, jet aircraft (commercial or non-fighter), jet aircraft (military fighter), outboard engine (small skiffs, rafts), pile driving, propeller aircraft, sub-bottom profiler, unclassified machinery (continuous mechanical sound; *e.g.,* engine), unidentified 'clank' or 'bang' (impulsive mechanical sound; *e.g.,* barge dumping), unidentified (unclassifiable anthropogenic sound), unknown up- or down-sweep (modulated tone of mechanical origin; *e.g.,* hydraulics). A total of 6,263 anthropogenic acoustic events were detected and classified, which had a total duration of 1,025 hours and represented 11.7% of the sound recordings analyzed. There was strong variability in source diversity, loudness, distribution, and seasonal occurrence of noise, which reflects the many different activities within the Cook Inlet. Cairn Point was the location where the loudness and duration of commercial ship noise events were most concentrated, due to activities at the POA. This specific source of anthropogenic noise was present in the recordings from all months analyzed, with highest levels in August. In addition to the concentrated shipping noise at Cairn Point, a combination of unknown noiseclasses occurred in this area, particularly during summer. Specifically, unknown up or down sweeps, unidentified, unclassed machinery, and unidentified clank or bang noise classes were all documented. In contrast, Eagle River (north of the

POA and where CIBWs concentrate to forage) was the quietest of all sampled locations.

Potential Pile Driving Effects on Prey—Pile driving produces continuous, non-impulsive (*i.e.,* vibratory pile driving) sounds and intermittent, pulsed (*i.e.,* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). SPLs of sufficient strength have been known to cause injury to fish and fish mortality (summarized in Popper *et al.* 2014). The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

As discussed in the *Marine Mammal* section above, NMFS designated CIBW critical habitat in Knik Arm. Knik Arm is Type 1 habitat for the CIBWs, which means it is the most valuable, used intensively by beluga whales from spring through fall for foraging and nursery habitat. However, the POA, the adjacent navigation channel, and the turning basin were excluded from critical habitat designation due to national security concerns (76 FR 20180, April 11, 2011). Foraging primarily occurs at river mouths (*e.g.,* Susitna Delta, Eagle River flats) which are unlikely to be influenced by pile driving activities. The Susitna Delta is more than 20 km from the POA and Cairn Point is likely to impede any pile driving noise from propagating into northern Knik Arm.

Acoustic habitat is the soundscape which encompasses all of the sound present in a particular location and time, as a whole, when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators) and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat. Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays or other sources). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.* 2011; Francis and Barber 2013; Lillis *et al.* 2014.

Beluga foraging habitat is limited at the POA given the highly industrialized area. However, foraging habitat exists near the POA, including Ship Creek and to the north of Cairn Point. Potential impacts to foraging habitat include increased turbidity and elevation in noise levels during pile driving. Because the POA is replacing an existing terminal, permanent impacts from the presence of structures is negligible. Here, we focus on construction impacts such as increased turbidity and reference the section on acoustic habitat impacts above.

Pile installation may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. POA must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6 m) radius around the pile (Everitt *et al.* 1980). Cetaceans are not expected to be close enough to the project activity areas to experience effects of turbidity, and any small cetaceans and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. No impacts to Ship Creek or critical CIBW foraging habitats are anticipated.

In summary, activities associated with the proposed PCT project are not likely to have a permanent, adverse effect on marine mammal habitat or populations of fish species or on the quality of acoustic habitat. Marine mammals may choose to not forage in close proximity to the PCT site during pile driving; however, the POA is not a critical foraging location for any marine mammal species. As discussed above, harbor seals primarily use Ship Creek as foraging habitat within Knik Arm. Beluga whales utilize Eagle Bay and rivers north of the POA which are not expected to be ensonified by the PCT project. Therefore, no impacts to critical foraging grounds are anticipated.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes, high frequency species, and phocids because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for mid-frequency species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine

mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. In general, NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. However, ambient noise levels within Knik Arm are above the 120-dB threshold, and therefore, for purposes of this analysis, NMFS considers received levels above those of the measured ambient noise (122.2 dB) to constitute Level B harassment of marine mammals incidental to continuous noise, including vibratory pile driving.

Results from the most recent acoustic monitoring conducted at the port are presented in Austin et al. (2016) and Denes et al. (2016) wherein noise levels were measured in absence of pile driving from May 27 through May 30, 2016 at two locations: Ambient-Dock and Ambient-Offshore. NMFS considers the median sound levels to be most appropriate when considering background noise levels for purposes of evaluating the potential impacts of the POA's PCT Project on marine mammals. By using median value, which is the 50th percentile of the measurements, for ambient noise level, one will be able to eliminate the few transient loud identifiable events that do not represent the true ambient condition of the area. This is relevant because during two of the four days (50 percent) when background measurement data were being collected, the U.S. Army Corps of Engineers was dredging Terminal 3 (located just north of the Ambient-Offshore hydrophone) for 24 hours per day with two 1-hour breaks for crew change. On the last two days of data collection, no dredging was occurring. Therefore, the median provides a better representation of background noise levels when the PCT project would be occurring. With regard to spatial considerations of the measurements, the Ambient-Offshore location is most applicable to this discussion as it is complies with the NMFS 2012 memo discussed above. The median ambient noise level collected over four days at the end of May at the Ambient-Offshore hydrophone was 122.2 dB. We note the Ambient-Dock location was quieter, with a median of 117 dB; however, that hydrophone was placed very close to the dock and not where we would expect Level B harassment to occur given mitigation measures (*e.g.,* shut downs). If additional data collected in the future warrant revisiting this issue, NMFS may adjust the 122.2 dB rms Level B harassment threshold.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The POA's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in Table 5 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The estimated sound source levels and transmission loss coefficient used in our analysis are based on direct measurements during installation of unattenuated 48-in piles during the POA's 2016 TPP and measurements collected during marine construction projects conducted by the U.S. Navy. All source levels used in our analysis are presented in Table 6.

TABLE 6—ESTIMATED SOUND SOURCE LEVEL WITH AND WITHOUT A BUBBLE CURTAIN

Method and pile size	Sound Level at 10 m						Data source
	Unattenuated [1]			Bubble curtain			
Vibratory	db rms			7 dB reduction, dB rms			
144-in	178			171			Caltrans 2015.
48-in	168			161			Austin et al. 2016
36-in	166			159			Navy 2015.
24-in	161			154			Navy 2015.
	Unattenuated [1]			Bubble curtain			
Impact	dB rms	dB SEL	dB peak	dB rms	dB SEL	dB peak	
144-in	209	198	220	202	191	213	Caltrans 2015.
48-in	200	187	215	193	180	208	Austin et al. 2016.
36-in	194	184	211	187	177	204	Navy 2015.
24-in	193	181	210	186	174	203	Navy 2015.

[1] We note the only piles that may be driven or removed without a bubble curtain are 24-in battered piles. We included unattenuated SLs here for 36-in, 48-in, and 144-in piles to demonstrate how the 7dB reduction for bubble curtains was applied.

During the TPP, JASCO computed transmission loss (TL) coefficients, derived from fits of the received sound level data versus range. TL coefficients varied between piles with values ranging from 13 to 19.2 for impact pile driving and from 12.6 to 17.9 for vibratory pile driving when using sound attenuation devices. Results for the unattenuated hydraulic impact hammer yielded the highest TL coefficient, 19.2, indicating that sounds from the hydraulic impact hammer decayed most rapidly with range compared to the other hammers. The TL coefficient for the unattenuated diesel impact hammer averaged 17.5. Sounds from the unattenuated vibratory hammer had the lowest TL coefficient, with values of 16.1 and 16.9.

Based on these data, the POA proposed different transmission loss rates depending on if SEL (used for Level A harassment) or rms (used for Level B harassment) values were being evaluated. SPLrms is a pressure metric and SEL an energy metric. The difference in TL coefficient is a reflection of how SPLrms or SEL is dissipated in the marine environment. During underwater sound propagation, pressure amplitude tends to suffer more loss due to multipath propagation and reverberation, while acoustic energy does not dissipate as rapidly. Accordingly, the POA proposed using TL rate of 16.85 for assessing potential for Level A harassment from impact pile driving but a TL rate of 18.35, based on Austin et al. (2016), when assessing potential for Level B harassment from impact pile driving. For vibratory pile driving, SPLrms is used for both Level A harassment and Level B harassment analysis and, based on Austin et al. (2016), the POA applied a TL rate of 16.5. NMFS found these transmission loss rates acceptable and carried them forward in our analysis.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as pile driving), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS.

The User Spreadsheet also includes a default, single frequency weighting factor adjustment (WFA) to account for frequency hearing groups. During the 2016 TPP, the POA collected direct measurements of sound generated

during installation of 48-in piles. The spectra associated with impact and vibratory driving 48-in unattenuated piles was also derived. Therefore, we accepted POA's applied spectra approach for 48-in piles but relied on the User Spreadsheet default WFA for all other pile sizes.

Inputs used in the User Spreadsheet for 24-in, 36-in and 144-in piles, and the resulting isopleths are reported in Table 7.

TABLE 7—NMFS USER SPREADSHEET INPUTS

Spreadsheet Tab Used	24-in (unattenuated)	24-in (bubble curtain)	36-in (bubble curtain)	48-in (bubble curtain)	144-in (bubble curtain)
	(E.1) Impact pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving
User Spreadsheet Input: Impact Pile Driving (TL = 16.85)					
Source Level (Single Strike/shot SEL)	181	174	177	180	191
Weighting Factor Adjustment (kHz)	2	2	2	measured spectra	2
Number of strikes pile	100	100	3,000	2,300 or 3,000	5,000
Piles per day	5	5	1–3	1–3	0.3 or 0.7
User Spreadsheet Input: Vibratory Pile Driving (TL = 16.5)					
Spreadsheet Tab Used	(A) Non-Impul, Stat, Cont.	(A) Non-Impul, Stat, Cont.	(A) Non-Impul, Stat, Cont.	(A) Non-Impul, Stat, Cont.	(A) Non-Impul, Stat, Cont.
Source Level (SPL RMS)	161	154	159	171	171
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	measured spectra	2.5
Time to drive single pile (minutes)	75	100	75	30	45
Piles per day	1–5	1–3	1–3	1	1

To calculate the Level B harassment isopleths, NMFS considered SPLrms source levels and the corresponding TL coefficients of 18.35 and 16.5 for impact and vibratory pile driving, respectively. The resulting Level A harassment and Level B harassment isopleths are presented in Table 8.

TABLE 8—DISTANCES TO LEVEL A HARASSMENT, BY HEARING GROUP, AND LEVEL B HARASSMENT THRESHOLDS PER PILE TYPE AND INSTALLATION METHOD

Pile size	Hammer type	Attenuation	Piles installed/ day	Level A harassment (m)					Level B harassment (m)
				LF	MF	HF	PW	OW	
48-in (2,300 strikes per pile).	Impact	Bubble Curtain	1	655	34	766	376	36	629
			2	989	51	1156	567	55	.....
			3	1258	65	1470	721	70	.....
48-in (3,000 strikes per pile).	Impact	Bubble Curtain	1	767	39	897	440	43	629
			2	1158	59	1353	664	64	.....
			3	1473	76	1721	844	82	.....
48-in	Vibratory	Bubble Curtain	1	5	1	7	3	0	2,247
36-in	Vibratory	Bubble Curtain	3	12	1	17	8	1	1,699
			4	14	2	20	9	1	.....
	Impact	Bubble Curtain	1	509	26	595	292	28	296
			2	768	39	898	440	43	.....
			3	978	50	1142	560	54	.....
24-in	Vibratory	Bubble Curtain	3	3	0	5	2	0	846
			4	7	1	10	4	0	.....
		Unattenuated	3	9	1	13	6	1	2,247
			4	19	2	27	12	1	.....
	Impact	Bubble Curtain	5	77	4	90	44	4	261
		Unattenuated	5	304	16	355	174	17	629
144-in	Impact	Bubble Curtain	0.3	2286	117	2672	1311	127	1,945
			0.7	3781	194	4418	2167	210	1,945
	Vibratory		1	24	3	34	15	1	9,069

Marine Mammal Occurrence and Take Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals and present take calculations.

For all species of cetaceans other than beluga whales, density data is not available for upper Cook Inlet. Therefore, the POA relied on marine mammal monitoring data collected during past POA projects. These data cover the construction season (April through November) across multiple years. Estimated exposure from pile installation for all marine mammals except beluga whales is calculated by the following equation: Exposure estimate = N * # days of pile installation, where: N = highest daily abundance estimate for each species in project area across all years of data.

Harbor Seals

Marine mammal monitoring data collected during from previous POA projects were used to estimate daily sighting rates for harbor seals in the project area. The highest individual sighting rate recorded for a previous year was used to quantify take of harbor seals for pile installation associated with the PCT. The number of sightings of harbor seals during 2016 TPP construction monitoring was 28 sightings recorded over 83.5 hours of monitoring from May 3 through June 21, 2016. Based on these observations, the sighting rate during the 2016 TPP construction monitoring period was one harbor seal every 3 hours, or approximately four harbor seals per 12-hour work day. Given projected positive population growth, it is anticipated that eight harbor seals may be observed, and potentially exposed to noise, per 12-hour work day.

Pile installation and removal is anticipated to take approximately 127 days for Phase 1 and 75 days for Phase 2. Therefore, we estimate that no more than 1,016 harbor seals during Phase 1 (8 harbor seals per day * 127 days) plus 600 harbor seals (8 harbor seals per day * 75 days) during Phase 2, for a total of 1,616 harbor seals, would be potentially exposed to in-water noise levels exceeding the Level B harassment thresholds for pile installation/removal during PCT construction.

The mouth of Ship Creek, where harbor seals tend to concentrate is located approximately 700 m from the southern end of the PCT, and is therefore located outside the harbor seals Level A zone for the majority of pile sizes for both impact and vibratory pile installation. However, there is potential for Level A harassment near Ship Creek during installation of three 48-in piles per day and installation of 144-in piles. We estimate 30 percent of the Level B exposures could result in Level A harassment which is similar to the proportion of work where the Level A harassment isopleth extend to Ship Creek. Therefore, the POA has requested, and NMFS proposes to authorize 305 Level A harassment and 711 Level B harassment takes in Phase 1 and 180 Level A harassment and 420 Level B harassment takes in Phase 2.

Steller Sea Lions

Steller sea lions are anticipated to be encountered in low numbers, if at all, within the project area. Three sightings of what was likely a single individual occurred in the project area in 2009 and two sightings occurred in 2016. Based on observations in 2016, we anticipate an exposure rate of 2 individuals every 19 days during PCT pile installation and removal. Based on this rate, the POA requested 13 sea lions takes during Phase 1 (127 days * [2 sea lions every 19 days]) and 8 Steller sea lion takes during Phase 2 (75 days for Phase 2 * [2 sea lions every 19 days]). During installation of 144-in piles (Phase 2), the Level A harassment isopleth extends beyond 100 m. Although Steller sea lions are readily detectable at these distances, we are not proposing the POA be required to shut down if a Steller sea lion is observed. Steller sea lions are rarely present in Knik Arm; however, they can linger in the area for multiple days. During Phase 1, the Level A harassment isopleth is less than the 100 m shutdown zone for all scenarios; therefore, the potential for Level A take is negligible. During installation of the 144-in piles in Phase 2, there is a low potential for Level A harassment and an animal may remain for a couple days; therefore, we allocate two takes in Phase 2 to Level A harassment.

Harbor Porpoise

Previous monitoring data at the POA were used to evaluate daily sighting rates for harbor porpoises in the project area. During most years of monitoring, no harbor porpoises were observed. The highest individual sighting rate for any recorded year during pile installation and removal associated with the PCT was an average of 0.09 harbor porpoises per day during 2009 construction monitoring, but this value may not account for increased sightings in Upper Cook Inlet (Shelden et al. 2014). Therefore, the POA assumed that one harbor porpoise could be observed every 2 days of pile driving. Based on this assumption, the POA has requested, and NMFS is proposing to authorize, 64 exposures during Phase 1 (127 days * [1 harbor porpoise every 2 days]) and 38 harbor porpoises during Phase 2 (75 days for Phase 2 * [1 harbor porpoise every 2 days]). This estimate also covers the possibility that larger groups (2–3 individuals) of harbor porpoise could occur occasionally.

Harbor porpoises are relatively small cetaceans that move at high velocities, which can make their detection and identification at great distances difficult. Using the NMFS User Spreadsheet, impact driving 36-in, 48-in and 144-in piles results in Level A harassment isopleths larger than the Level B harassment isopleth. Vibratory driving and removal result in much smaller Level B harassment zone than Level B harassment zones and many temporary piles (the bulk of the work) would be installed and removed with a vibratory hammer. Further, the Level A harassment isopleths consider long durations and harbor porpoise are likely moving through the area, if present, not lingering. Therefore, we propose to authorize approximately one-third of the expected take to Level A harassment. For Phase 1, we are proposing to authorize 21 takes by Level A harassment and 43 takes by Level B harassment. For Phase 2, we propose to authorize 13 Level A harassment and 25 Level B harassment takes.

Killer Whales

Few, if any, killer whales are expected to approach the project area. No killer whales were sighted during previous monitoring programs for the Knik Arm Crossing and POA construction projects, including the 2016 TPP. The infrequent sightings of killer whales that are reported in upper Cook Inlet tend to occur when their primary prey (anadromous fish for resident killer whales and beluga whales for transient killer whales) are also in the area (Shelden et al. 2003). Previous sightings of transient killer whales have documented pod sizes in upper Cook Inlet between one and six individuals (Shelden et al. 2003). The potential for exposure of killer whales within the Level B harassment isopleths is anticipated to be extremely low. Level B take is conservatively estimated at no more than 12 individuals during Phase 1 and Phase 2 to account for two large (n = 12) groups or several smaller groups. No Level A harassment take for killer whales is anticipated or proposed to be authorized due to the small Level A harassment zones and implementation of a 100 m shutdown which is larger than Level A harassment isopleths.

Humpback Whales

Sightings of humpback whales in the project area are rare, and the potential risk of exposure of a humpback whale to sounds exceeding the Level B harassment threshold is low. Few, if any, humpback whales are expected to approach the project area. However, there were two sightings in 2017 of what was likely a single individual at the Ship Creek Boat Launch (ABR 2017) which is located south of the project area. Based on these data, the POA conservatively estimates one humpback whale could be harassed every 16 days of pile driving. Therefore, the POA requested 8 humpback whale takes during Phase 1 (127 days for Phase 1 * [1 humpback whale every 16 days]) and 5 takes (75 days for Phase 2 * [1 humpback whale every 16 days]) for Phase 2. This could include sighting a

cow-calf pair on multiple days or multiple sightings of single humpback whales. The POA did not request Level A take of humpback whales; however, based on the distances to the large Level A harassment thresholds relative to Level B harassment isoplehts and the fact humback whale sightings in Upper Cook Inlet is rare, NMFS is proposing to issue two Level A harassment takes per year to account for a single individual or a cow/calf pair. Therefore, NMFS is proposing to issue two Level A harassment takes and six Level B harassment takes during Phase 1 and two Level A harassment takes and three Level B harassment takes for Phase 2.

Beluga Whales

For beluga whales, we looked at several sources of information on marine mammal occurrence in upper Cook Inlet to determine how best to estimate the potential for exposure to pile driving noise from the PCT Project. In their application, the POA took a two-step approach to estimating Level B harassment take. The POA first estimated the numbers of beluga whales potentially exposed to noise levels above the Level B harassment threshold for pile installation and removal using the following formula: Beluga Exposure Estimate = N * Area * number of days of pile installation/removal, where: N = maximum predicted # of beluga whales/km^2 in Knik Arm (0.291 whales/km^2) based on data from Goetz et al. (2012a) and Area = Area ensonified above Level B harassment threshold (km^2). We note the actual beluga whale densities within the Level B harassment isopleths predicted for the PCT project ranged from 0.042 to 0.236 beluga whales/km^2. However, the POA applied the highest beluga whale density in upper Knik Arm. The higher densities north of the POA are expected as beluga whales tend to concentrate in Eagle Bay to forage whereas in the lower Arm, where the POA is located, habitat use is more commonly associated with traveling. The POA's simple calculation results in 103 takes in Phase 1 and 125 takes in Phase 2. The second step in POA's take estimate approach was to apply a 50 percent correction factor to their density-based calculation. The POA provided several reasons why this reduction factor was appropriate, including, but not limited to: The POA's commitment to using a bubble curtain means that noise levels along the western side of Knik Arm will remain below the regulatory thresholds; providing a travel corridor for beluga whales to access upper Knik Arm; for the majority of PCT construction and pile installation and removal, only approximately half of the width of Knik Arm, along the eastern shore, would be ensonified; beluga whales observed in Knik Arm during the autumn were most frequently sighted on the western side of the arm (Funk et al. 2005); and beluga whales in Knik Arm year-round; however, sightings are much lower in winter through early summer.

We reviewed the POA's density-based take calculation approach and their reasons for applying a 50 percent correction factor. We determined use of the Goetz density data for this specific project is problematic because the density data is based on June aerial surveys while the PCT project is occurring from April through November, the data is over seven years old, and the multiple years of monitoring data collected by the POA is not incorporated into this approach. Regarding the rationale for applying a 50 percent correction factor, we found the use of a bubble curtain and the fact the majority of pile driving would ensonify half or less than half of the width of Knik Arm is already captured by the ensonsified area which is embedded into the take calculation. The POA is not pile driving during winter when beluga whale abundance is lowest and although early summer tends to see lower beluga abundance, the density used in the take calculation is from June surveys. Finally, any habituation to repeated exposure may be considered qualitatively in analyzing the intensity of reactions to pile driving but it cannot be quantified and is not considered in take estimates.

To better capture beluga whale distribution and abundance, we undertook a multi-step analysis consisting of an evaluation of long-term, seasonal sighting data, proposed mitigation and monitoring measures, the amount of documented take from previous POA projects compared to authorized take, and considered group size. First, in lieu of density data, NMFS applied sighting rate data presented in Kendell and Cornick (2015) to estimate hourly sighting rates per month (April through November). We then identified hours of pile driving per month. The POA indicated there will be extended durations when no pile driving is happening (*e.g.,* later in the season when decking and other out-of-water work is occurring); however, the schedule could not be more refined than assuming an equal work distribution across the construction season. The POA did indicate the first two weeks of April and the last two weeks in November would be most likely utilized for equipment mobilization and demobilization; therefore, pile driving effort during those months were limited to two weeks. The data and calculated exposure estimates are presented below. These calculations assume no mitigation (*i.e.,* uncorrected take estimates) and that all animals observed would enter a given Level B harassment zone during pile driving. In total, we would expect approximately 94 exposures in Phase 1 and 60 exposures in Phase 2.

TABLE 9—UNCORRECTED BELUGA WHALE EXPOSURE ESTIMATES FOR PHASE 1 AND PHASE 2

Month	Monitoring data [1]			Estimated instances of take			
	Effort hours	Number of whales observed	Average whale/hr	Pile driving hours Phase 1 [2]	CIBW exposures Phase 1	Pile driving hours Phase 2 [2]	CIBW exposures Phase 2
April	12	2	0.17	25.64	4.27	16.37	2.73
May	156	40	0.26	51.29	13.15	32.71	8.39
June	280	8	0.03	51.29	1.47	32.71	0.94
July	360	2	0.01	51.29	0.28	32.71	0.18
August	426	269	0.63	51.29	32.38	32.71	20.65
Sept	447	169	0.38	51.29	19.37	32.71	12.35
October	433	22	0.05	51.29	2.61	32.71	1.66
Nov	215	175	0.82	25.64	20.91	16.37	13.35
Total	2317	685	0.30	359.02	94.44	229.00	60.25

[1] From Kendell and Cornick 2015.

[2] Assumes equal work distribution/month except in April and November when the POA has indicated they would be conducting only 2 weeks of pile driving due to time needed for mobilization and demobilization.

Second, NMFS then considered the proposed mitigation and distribution of beluga whales in Knik Arm. In the POA's application, they proposed a 100-m shutdown zone. However, as described in more detail below, NMFS has imposed additional mitigation designed to reduce Level B harassment take as well as Level A harassment take. We recognize that in certain situations, pile driving may not be able to be shutdown prior to whales entering the Level B harassment zone due to safety concerns. Sometimes beluga whales were initially observed when they surfaced within the harassment zone. For example, on November 4, 2009, 15 whales were initially sighted approximately 950 meters north of the project site near the shore, and then they surfaced in the Level B harassment zone during vibratory pile driving (ICRC 2009b). Construction activities were immediately shut down, but the 15 whales were documented as takes. On other occasions, beluga whales were initially sighted outside of the harassment zone and shut down was called, but the beluga whales swam into the harassment zone before activities could be halted, and take occurred. For example, on September 14, 2009, a construction observer sighted a white beluga whale just outside the harassment zone, moving quickly towards the 1,300 meter Level B harassment zone during vibratory pile driving. The animal entered the harassment zone before construction activity could be shut down, and was documented as a take (ICRC 2009c).

To more accurately estimate potential exposures, we looked at previous takes at the POA and those actually authorized. Between 2008 and 2012, NMFS authorized 34 beluga whale takes per year to POA with mitigation measures similar to the measures proposed here. The percent of the authorized takes that were documented as actually occurring during this time period ranged from 12 to 59 percent with an average of 36 percent (Table 10). The previous method of estimating take was based on density; however, the results between using densities versus sighting rate are somewhat comparable (*e.g.,* 94 exposures in Phase 1 using sighting rates versus 103 exposures using density). Further, there was extensive scientific monitoring and POA construction monitoring occurring during these time periods; therefore, we believe there is little potential animals were taken but not observed. Therefore we believe this first step in our analysis is reasonable.

TABLE 10—AUTHORIZED AND REPORTED BELUGA WHALE TAKES DURING POA ACTIVITIES FROM 2009–2012

ITA effective dates	Reported takes	Authorized take	Percent of authorized takes occurred
15 July 2008–14 July 2009	12	34	35
15 July 2009–14 July 2010	20	34	59
15 July 2010–14 July 2011	13	34	38
15 July 2011–14 July 2012	4	34	12

Second, we applied the highest percentage of previous takes to ensure potential impacts to beluga whales are fully evaluated and to ensure the POA has an adequate amount of take. Therefore, we assume that approximately 59 percent of the takes calculated for Phase 1 (n=94) and Phase 2 (n=64) will actually be realized. This approach is further supported by the proposed mitigation measures which are strict shutdown requirements for CIBWs with a goal of avoiding Level B take altogether, similar to previous POA mitigation measures.

Finally, we then considered group size from the long-term scientific monitoring effort and POA opportunistic data to determine if these numbers represented realistic scenarios. Figure 2 presents data from the scientific monitoring program. The APU scientific monitoring data set documented 390 beluga whale sightings.

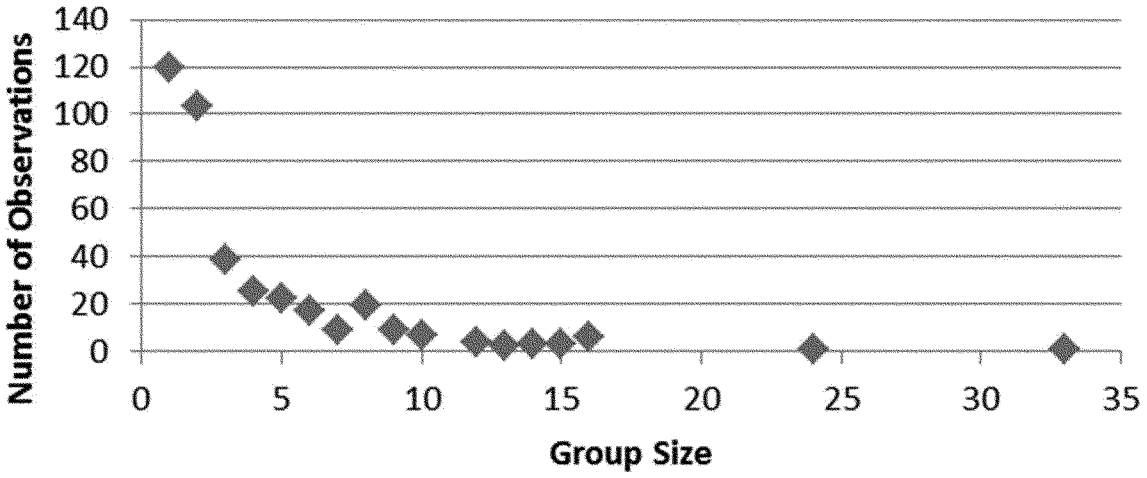


Figure 2. CIBW Sighting Data from POA Scientific Monitoring.

Group size exhibits a mode of 1 and a median of 2, indicating that over half of the beluga groups observed over the 5-year span of the monitoring program were of individual beluga whales or groups of 2. The 95th percentile of group size from the APU scientific monitoring data set is 11.1 beluga whales. This means that, of the 390 documented beluga whale groups in this data set, 95 percent consisted of fewer than 11.1 whales; 5 percent of the groups consisted of more than 11.1 whales. We conclude the amount of take proposed to be authorized following the approach above allows for the potential for large groups to be exposed to noise above NMFS harassment thresholds.

For reasons described above, NMFS believes this approach adequately analyzes the risk of beluga whale exposure to Level B harassment from the PCT Project. We conclude there is the potential for 45 exposures in Phase 1 and 33 exposures in Phase 2 (Table 11).

TABLE 11—PROPOSED BELUGA WHALE LEVEL B HARASSMENT EXPOSURES

PCT construction phase	Calculated exposure	Proposed take [1]
Phase 1—2020	94	55
Phase 2—2021	60	35

[1] Proposed take is identified as 59 percent of the calculated exposures using sighting rates.

In summary, the total amount of Level A harassment and Level B harassment proposed to be authorized for each marine mammal stock is presented in Table 12.

TABLE 12—PROPOSED AMOUNT OF TAKE, BY STOCK AND HARASSMENT TYPE

Species	Stock	Phase 1 (2020)			Phase 2 (2021)		
		Level A	Level B	Percent of stock	Level A	Level B	Percent of stock
Humpback whale	Western N Pacific	2	6	0.7	2	4	0.7
Beluga whale	Cook Inlet	0	55	17	0	35	11
Killer whale	Transient/Alaska Resident.	0	12	2	0	12	2
Harbor porpoise	Gulf of Alaska	21	43	0.2	13	25	0.2
Steller sea lion	Western	0	13	<0.1	2	6	<0.1
Harbor seal	Cook Inlet/Shelikof	305	711	3.6	180	420	2.1

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The POA presented a number of mitigation measures in section 11 of their application. NMFS accepted a number of these measures (*e.g.,* use of bubble curtains on all plumb piles) but also requested the POA consider additional noise attenuation measures and modified shut down zones, among other things. We present mitigation measures NMFS has determined to affect the least practicable adverse impact on marine mammals and their habitat followed by a discussion of the ongoing considerations by NMFS and the POA which will be made final prior to issuance of the final IHA.

A key mitigation measure NMFS considered for this project is reducing noise levels propagating into the environment. The POA will use a bubble curtain on all plumb piles. At this time, NMFS is not requiring an unconfined bubble curtain. The POA presented a Technical Manual on the analysis of water current velocity data collected in the vicinity of the proposed PCT (TerraSound 2016) demonstrating current speeds were approximately 3 knots (kts) during times when tides were strongest. The POA has not finalized the bubble curtain design; however, bubble ring placement and bubble sizes and spacing must combat the current. In addition, the sound source verification results (see Proposed

Monitoring and Reporting Measures section below) must demonstrate the bubble curtain is achieving consistent noise attenuation such that source levels are at or below those evaluated in this document during all tide phases. The bubble curtain will be designed to absorb as much sound as possible. The POA proposed, and NMFS is requiring, all plumb piles installed in-water be done so in the presence of a fully operational bubble curtain.

The POA is also currently evaluating means by which to reduce sound propagation on battered piles. The POA has indicated that a full bubble curtain ring is not possible on battered piles; however, NMFS has requested the POA further investigate other means of reducing noise such as a linear or semi-circular curtain around the work area. The POA is actively looking into this and final noise attenuation plans will be made prior to issuance of the IHA. We note that for purposes of our analysis here, NMFS did not consider any noise attenuation during installation of battered piles. However, we are requiring that unattenuated piles not be driven in water depths greater than 3 meters based on the cutoff frequency (Roger and Cox, 1988). The intent of this measure is to reduce sound propagation. In shallower waters, lower frequencies tend to be cutoff more rapidly than high frequency sources.

In addition to noise attenuation devices, NMFS considered the amount of sound energy entering the aquatic environment. The installation of 144-in piles is included in Phase 2 (2021) and NMFS has determined that given the extensive Level B harassment zone generated from this activity, vibratory driving these large piles during peak beluga whale season poses an amount of risk and uncertainty to the degree that it should be minimized. Therefore, vibratory driving 144-in piles will not occur during August. Further, to minimize the potential for overlapping sound fields from multiple stressors, the POA will not simultaneously operate two vibratory hammers for either pile installation or removal. This measure is designed to reduce simultaneous in-water noise exposure. Because impact hammers will unlikely be dropping at the same time, and to expedite construction of the project to minimize pile driving during peak beluga whale abundance periods, NMFS is not proposing to restrict the operation of two impact hammers at the same time. We note that harassment zones during impact pile driving will radiate from both of the piles being driven, not a single pile.

NMFS also considered other means by which to remove piles since the majority of piles installed for this project are temporary (we note the POA reduced the amount of temporary piles originally proposed for this project). NMFS inquired about the potential to direct pull piles or cut them off at the mudline; thereby, reducing in-water noise levels. The POA responded that the depth at which temporary piles would be installed and substrate precludes directly pulling the piles. Cutting piles at the mudline also presents navigational (*e.g.,* anchoring) and safety concerns.

In their IHA application, the POA proposed a 100-m shutdown zone for all marine mammals or, where the Level A harassment zone was deemed to be greater than 100 m, a shutdown zone equivalent to the Level A harassment zone. NMFS found this measure did not effect the least practicable adverse impact on marine mammals for several reasons.

First, except for 48-in piles, the Level A harassment zones in the application are based on estimated spectra which NMFS does not support. Therefore, NMFS calculated Level A harassment zones for all piles (except 48-in piles) using the single frequency, default weighting factor adjustment provided in the NMFS User Spreadsheet. As shown in Table 8, Level A harassment zones for low-frequency and high frequency cetaceans and pinnipeds are rather large when considering multiple piles installed per day and installation of the 144-in piles. Sighting rates at these distances, specifically for harbor seals and porpoise, are unlikely to be good enough to ensure effective coverage. For these reasons, NMFS proposes a 100-m shutdown zone for all marine mammals (except beluga whales).

For beluga whales, NMFS determined the proposed shutdown zone of 100 m or the Level A harassment zone (if greater than 100 m) was not consistent with the conservation intentions of the POA nor what NMFS would consider as effecting the least practicable adverse impact based on the proposed project description and acoustic analysis. NMFS and the POA entered into discussions to discuss these opinions and have determined that measures and shutdown zones used in previous IHAs would ensure valuable protection and conservation of beluga whales. For this reason, NMFS is proposing the POA implement the following measures for CIBWs:

- Prior to the onset of pile driving, should a beluga whale(s) be observed within Knik Arm or approaching the mouth of Knik Arm, pile driving will be delayed until the whale moves away from the POA or is not re-sighted within 30 minutes. If non-beluga whale species are observed within or likely to enter the Level B harassment zone prior to pile driving, the POA may commence pile driving, recording and reporting MMPA take that occurs as a result.
- If pile driving has commenced and a beluga whale is observed within or likely to enter the Level B harassment zone, pile driving will shut down and not re-commence until the whale is out of and on a path away from the Level B harassment zone or until no beluga whale has been observed in the level B harassment zone for 30 minutes.
- If, during pile driving, PSOs can no longer effectively monitor all waters within the Level B harassment zone for the presence of marine mammals due to environmental conditions (*e.g.,* fog, rain, wind), pile driving may continue only until the current segment of pile is driven; no additional sections of pile or additional piles may be driven until conditions improve such that the Level B harassment zone can be effectively monitored. If the Level B harassment zone cannot be monitored for more than 15 minutes, the entire Level B zone must be cleared again for 30 minutes prior to pile driving.

In addition to these measures which greatly reduce the potential for harassment to beluga whales and set shutdown zones that realistically reflect non-beluga whale detectability, NMFS is including general mitigation measures typically included in IHAs:

- PSOs shall begin observing for marine mammals 30 minutes before pile driving begins for the day and must continue for 30 minutes when pile driving ceases at any time. If pile driving has ceased for more than 30 minutes within a day, another 30-minute pre-pile driving observation period is required before pile driving may commence.
- POA must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.
- For in-water construction other than pile driving, the POA must cease operations or reduce vessel speed to the minimum level required to maintain steerage and safe working conditions if a marine mammal approaches within 10 m of the equipment or vessel.

• POA is required to conduct briefings for construction supervisors and crews, the monitoring team, and POA staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

• If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the monitoring zone (Table 8), pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or the 30 minutes observation time period has elapsed.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

During the 2016 TPP, observers for that project ()provided a number of recommendations to improve marine mammal monitoring for POA projects. These recommendations included:

• A minimum of three PSOs at an observation station is necessary to prevent fatigue and increase accuracy of detecting marine mammals, especially for large-radius zones. When using three PSOs, one PSO is observing, one PSO is recording data (and observing when there are no data to record), and the third PSO is resting. A fourth PSO allows the scanning of a 90-degree arc, instead of a 180-degree arc, increasing scan intensity and the likelihood of detecting marine mammals. Thirty to 60 minute rotations work well with this schedule.

• Communications between the pile driving/construction contractor and the PSOs should take place between one dedicated point of contact, or Lead PSO, for each shift.

• Each observation station should employ a pair of 25-power binoculars as they were superior to the 7- and 10-power binoculars at detecting and identifying marine mammals at greater distances.

• Electronic data collection methods should be considered. iPad applications and other technological advances make it possible to collect data quickly and accurately. A theodolite can be plugged into the device and marine mammal locations can be calculated on the spot, minimizing uncertainty. Data can be downloaded throughout the day to a database, eliminating the need for data entry by hand, and allowing quicker data assessment.

• Hard copy maps with pre-established grid-cells and harassment zones specific to the pile location being driven were invaluable. These maps allowed for immediate, accurate and consistent identification of marine mammal locations relative to the harassment zones, regardless of observation station.

The POA's IHA application addresses the majority of these recommendations in its Marine Mammal Monitoring Plan (Appendix A in POA's application) and NMFS proposes additional measures here. NMFS is requiring at least three PSOs (two on-watch and one to record data) will be positioned at the norther and southern station while two PSOs will be on-watch at the PCT (*i.e.,* pile driving) station. Each station will be equipped with several pieces of equipment (see section 2.4 in Appendix A of POA's application), including 25x binoculars and a range finders, as recommended above. One station will have a theodolite. PSOs may observe for no more than 4 hours at time and no more than 12 hours per day. The POA will submit all PSO CVs to NMFS prior to a PSO working on this project. Where necessary, NMFS may require a potential PSO shadow an experienced PSO before working independently.

To improve beluga whale detection, NMFS has worked with the POA to include PSO stations in different locations than the three stations proposed by the POA, which were all on POA property. The POA will have three PSO stations. One PSO station will be located at the PCT pile driving site. One station will be at Port Wornzof or a similar location to maximize beluga whale detection outside of Knik Arm and the mouth of Knik Arm. PSOs at this location will have unencumbered views of the entrance to Knik Arm and can provide information on beluga whale group dynamics (*e.g.,* group size, demographics, etc) and behavior of animals approaching Knik Arm in the absence of and during pile driving. We have also considered moving a station from the POA property to Port MacKenzie for an improved view of beluga whales moving from north to south within Knik Arm. However, the POA is currently investigating if this is an option with respect to accessibility (*i.e.* private property) and personnel safety. If Port MacKenzie is not an available option, the third PSO station will be located toward the north end of the POA property. The exact placement of this northern station will be determined prior to issuing the IHA. We note the previous station at Cairn Point

used several years ago is Elemendorf Air Force Base property and is no longer accessible.

For both Phase 1 and Phase 2, NMFS is requiring the POA submit interim weekly and monthly monitoring reports during the PCT construction season. These reports must include a summary of marine mammal species and behavioral observations, pile driving shutdowns or delays, and pile work completed. A final end-of season report will be submitted to NMFS within 90 days following pile driving. The report must include: Dates and times (begin and end) of all marine mammal monitoring; a description of daily construction activities, weather parameters and water conditions during each monitoring period; number of marine mammals observed, by species, distances and bearings of each marine mammal observed to the pile being driven or removed, age and sex class, if possible; number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied); description of mitigation triggered, and description of attempts to distinguish between the number of individual animals taken and the number of incidences of take. In addition, any acoustic data and analysis collected throughout the year will also be made available to NMFS in the form of an interim report within 10 days of data collection and a final report within 60 days. Mean, median, and peak sound source levels (dB re: 1μPa): cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), root mean square sound pressure level (SPLrms), and single-strike sound exposure level (SELs-s) will be reported as well as pile descriptions and acoustic monitoring methods (*e.g.,* sampling rate, distance to the hydrophone from the pile, etc.).

NMFS has also included reporting requirements for more uncommon situations. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as serious injury, or mortality, POA must immediately cease the specified activities and report the incident to the NMFS. In the event POA discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), POA must immediately report the incident to the Office of Protected Resources, NMFS, and the Alaska Region Stranding Coordinator, NMFS. In addition, in the event that POA discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the specified activities (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), POA must report the incident to the Office of Protected Resources, NMFS, and the Alaska Region Stranding Coordinator, NMFS, within 24 hours of the discovery.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all species listed in Table 4 except for CIBWs, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. For CIBWs, there are meaningful differences in anticipated individual responses to activities, impact of expected take on CIBWs), or impacts on habitat; therefore, we provide a supplemental analysis for CIBWs, independent of the other species for which we propose to authorize take.

NMFS has identified key factors which may be employed to assess the level of analysis necessary to conclude whether potential impacts associated with a specified activity should be considered negligible. These include (but are not limited to) the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect to the species or stock, and the status of the species or stock. The following factors support a negligible impact determination for the affected stocks of humpback whales, killer whales, harbor porpoise, harbor seals, and Steller sea lions. Some of these also apply to CIBWs; however, a more detailed analysis for CIBWs is provided below.

- No takes by mortality or serious injury are anticipated or authorized;
- The number of total takes (by Level A and Level B harassment) are less than 3 percent of the best available abundance estimates for all stocks;
- Take would not occur in places and/or times where take would be more likely to accrue to impacts on reproduction or survival, such as within ESA-designated or proposed critical habitat, biologically important areas (BIA), or other habitats critical to recruitment or survival (*e.g.,* rookery);
- Take would occur over a short timeframe, being limited to the short duration a marine mammal would likely be present within a Level B harassment zone during pile driving;
- Any impacts to marine mammal habitat from pile driving are temporary and minimal; and
- Take would only occur within upper Cook Inlet—a limited, confined area of any given stock's home range.

For CIBWs, we further discuss our negligible impact finding in the context of potential impacts to this endangered stock. As described in the Recovery Plan for the Cook Inlet Beluga Whale (NMFS, 2016), NMFS determined the following physical or biological features are essential to the conservation of this species: (1) Intertidal and subtidal waters of Cook Inlet with depths less than 30 feet mean lower low water (9.1 m) and within 5 mi (8 km) of high and medium flow anadromous fish streams; (2) Primary prey species consisting of four species of Pacific salmon (Chinook, sockeye, chum, and coho), Pacific eulachon, Pacific cod, walleye pollock, saffron cod, and yellowfin sole, (3) Waters free of toxins or other agents of a type and amount harmful to CI beluga whales, (4) Unrestricted passage within or between the critical habitat areas, and

(5) Waters with in-water noise below levels resulting in the abandonment of critical habitat areas by CI beluga whales. The PCT would not impact essential features 1–3 listed above. All construction would be done in a manner implementing best management practices to preserve water quality and no work would occur around creek mouths or river systems leading to prey abundance reductions. In addition, no physical structures would restrict passage; however, impacts to the acoustic habitat are of concern. Previous marine mammal monitoring data at the POA demonstrate beluga whales indeed pass by the POA during pile driving. As described above, there was no significant difference in beluga sighting rate with and in the absence of pile driving (Kendell and Cornick, 2015). However, beluga whales do swim faster and in tighter formation in the presence of pile driving (Kendell and Cornick, 2015).

During review of the POA's application, NMFS was concerned that exposure to pile driving at the PCT could result in beluga whales avoiding Knik Arm and thereby not accessing the productive foraging grounds north of POA such as Eagle River flats based on the proposed project and mitigation measures—thus, impacting essential feature number 5 above. Although the data previously presented demonstrate whales are not abandoning the area (*i.e.,* no significant difference in sighting rate with and without pile driving), we considered the results of a recent expert elicitation (EE) at a 2016 workshop, which predicted the impacts of noise on CIBW survival and reproduction given lost foraging opportunities, to inform our assessment of impacts on this stock. The 2016 EE workshop used conceptual models of an interim population consequences of disturbance (PCoD) for marine mammals (NRC 2005; New et al. 2014, Tollit et al., 2016) to help in understanding how noise-related stressors might affect vital rates (survival, birth rate and growth) for CIBW (King et al. 2015). NMFS (2015, section IX.D—CI Beluga Hearing, Vocalization, and Noise Supplement) suggests that the main direct effects of noise on CIBW are likely to be through masking of vocalizations used for communication and prey location, and habitat degradation. The 2016 workshop on beluga whales was specifically designed to provide regulators with a tool to help understand whether chronic and acute anthropogenic noise from various sources and projects are likely to be limiting recovery of the CIBW population. The full report can be found at *http://www.smruconsulting.com/publications/* and we provide a summary of the expert elicitation portion of the workshop here.

For each of the noise effect mechanisms chosen for expert elicitation, the experts to provide a set of parameter values that determined the forms of a relationship between the number of days of disturbance a female CIBW experiences in a particular period and the effect of that disturbance on her energy reserves. Examples included the number of days of disturbance during the period April, May and June that would be predicted to reduce the energy reserves of a pregnant CIBW to such a level that she is certain to terminate the pregnancy or abandon the calf soon after birth, the number of days of disturbance in the period April-September required to reduce the energy reserves of a lactating CIBW to a level where she is certain to abandon her calf, and the number of days of disturbance where a female fails to gain sufficient energy by the end of summer to maintain themselves and their calves during the subsequent winter. Overall, median values ranged from 16 to 69 days of disturbance depending on the question. However, for this elicitation, a ''day of disturbance'' was defined as any day on which an animal loses the ability to forage for at least one tidal cycle (*i.e.,* it forgoes 50–100% of its energy intake on that day). Therefore, disturbance in this context is not equivalent to Level B harassment. The mitigation measures NMFS has proposed for the PCT project are designed to avoid the potential that any animal would lose the ability to forage for one or more tidal cycles. While Level B harassment (behavioral disturbance) is proposed to be authorized, our mitigation measures would minimize the intensity of that harassment to behavioral changes such as increased swim speeds, tighter group formations, and cessation of vocalizations, not the loss of foraging capabilities. Regardless, this elicitation recognized that pregnant or lactating females and calves are inherently more at risk than other animals, such as males. NMFS first considered proposing the POA shutdown based on more vulnerable life stages (*e.g.,* calf presence) but ultimately determined all beluga whales warranted pile driving shutdown to be protective of potential vulnerable life stages, such as pregnancy, that could not be determined from observations, and to avoid more severe behavioral reaction.

Monitoring data from the POA suggest pile driving does not discourage beluga whales from entering Knik Arm and travelling to critical foraging grounds such as those around Eagle Bay. As previously described, sighting rates were not different in the presence or absence of pile driving. This is not surprising as food is a strong motivation for marine mammals. As described in Forney et al. (2017), animals typically favor particular areas because of their importance for survival (*e.g.* feeding or breeding), and leaving may have significant costs to fitness (reduced foraging success, increased predation risk, increased exposure to other anthropogenic threats). Consequently, animals may be highly motivated to remain in an area despite negative impacts (*e.g.,* Rolland et al. 2012). Previous monitoring data indicates beluga whales are responding to pile driving noise but not through abandonment of critical habitat, including primary foraging areas north of the port. Instead, they travel faster past the POA, more quietly, and in tighter groups (which may be linked to the decreased communication patterns). We anticipate these behaviors to continue; however, do not believe they had adverse effects on reproduction or survival as the whales continue to access critical foraging grounds north of the POA and tight associations combat any communication space lost within a group. Finally, as described previously, beluga whales likely stay in upper Knik Arm for several days before exiting Knik Arm. Acoustic data indicate beluga whales move through lower Knik Arm relatively quickly, when entering or exiting the arm, and remain in the upper arm for several days, or weeks, before moving back out into Cook Inlet (Castellote et al., *in press*). Satellite telemetry data indicate such a movement pattern may be common. Specifically, a beluga instrumented with a satellite link time/depth recorder entered Knik Arm on August 18th and remained in Eagle Bay until September 12th (Ferrero et al. 2000). This longer-term use of upper Knik Arm would avoid repetitive exposures from pile driving noise.

NMFS has included mitigation measures beyond those proposed by the POA in the IHA application, specifically, not commencing pile driving if beluga whales are observed within Knik Arm or within 1 km of the mouth of Knik Arm, shutting down pile driving should a beluga whale approach or enter the Level B harassment zone, stationing PSOs at Point Woronzof, and not vibratory pile driving 144-in piles during August (peak beluga season). These measures are designed to ensure beluga whales will not abandon critical habitat and exposure to pile driving

noise will not result in adverse impacts on the reproduction or survival of any individuals. The location of PSOs at Point Woronzof allows for detection of beluga whales at much farther distances than previous years and behavioral observations prior to whales entering Knik Arm. Although NMFS does not anticipate beluga whales would abandon entering Knik Arm in the presence of pile driving with the proposed mitigation measures, these PSOs will be integral to identifying if belugas are potentially altering pathways they would otherwise take in the absence of pile driving. Because the POA is submitting weekly and monthly reports, NMFS will be able to regularly evaluate the impacts of the project on beluga whales. Finally, take by mortality, serious injury, or Level A harassment of CIBWs is not anticipated or proposed to be authorized.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect CIBWs through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- Area of exposure would be limited to travel corridors. Data demonstrates Level B harassment manifests as increased swim speeds past the POA and tight group formations and not through habitat abandonment.
- No critical foraging grounds (*e.g.* Eagle Bay, Eagle River, Susitna Delta) would be impacted by pile driving.
- While animals could be harassed more than once, exposures are not likely to exceed more than a few per year for any given individual and are not expected to occur on sequential days; thereby, decreasing the likelihood of physiological impacts caused by chronic stress or masking.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

For all stocks, the amount of taking is small relative to the population size (0.2 to 17 percent). Further, the amount of take proposed to be authorized likely represents smaller numbers of individual harbor seals and Steller sea lions. Harbor seals tend to concentrate near Ship Creek and have small home ranges; therefore, the amount of take authorized likely represents repeat exposures to the same animals. Previous Steller sea lion sightings identified that if a Steller sea lion is within Knik Arm, it is likely lingering to forage on salmon or eulachon runs and may be present for several days. With respect to CIBW, they are known to enter Knik Arm and then exit after several days of remaining within Knik Arm. There is potential an individual is taken on both ingress and egress; however, due to the mitigation measures (essentially takes are for animals where pile driving cannot be shut down before exposure), the circumstances would have to be such that pile driving is occurring while the whale is both entering and exiting Knik Arm and that the animal is missed or taken due to logistical constraints of shutting down pile driving immediately in both cases. Therefore, the potential for repeat takes is low and we anticipate take predominantly represents individual animals. Regardless, the amount of take proposed to be authorized for CIBW is small (17 percent or less).

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. No subsistence use of CIBWs occurs and subsistence harvest of other marine mammals is limited. The potential impacts from harassment on stocks that are harvested would be limited to minor behavioral changes (*e.g.,* increased swim speeds, changes in dive time, temporary avoidance near the POA, etc.) within the vicinity of the POA. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of CIBWs, humpback whales from the Mexico DPS stock, and Steller sea lions from the western DPS, which are listed under the ESA. Therefore, the Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the POA for the PCT Project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the POA's PCT Project. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an expedited public comment period (15 days) when (1) another year of identical or nearly identical activities as described in the Specified Activities

section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements.

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: December 20, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28102 Filed 12–27–19; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 84 Monday,

No. 249 December 30, 2019

Part III

The President

Proclamation 9974—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

Executive Order 13901—Adjustments of Certain Rates of Pay

Federal Register
Vol. 84, No. 249
Monday, December 30, 2019

Presidential Documents

Title 3—

The President

Proclamation 9974 of December 26, 2019

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 7350 of October 2, 2000, the President designated the Republic of Cameroon (Cameroon) as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the Trade Act of 1974, as amended (the ''Trade Act''), as added by section 111(a) of the African Growth and Opportunity Act (the ''AGOA'') (title I of Public Law 106–200, 114 Stat. 251, 257–58 (19 U.S.C. 2466a(a)(1)).

2. Section 506A(a)(3) of the Trade Act (19 U.S.C. 2466a(a)(3)) provides that the President shall terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act.

3. Pursuant to section 506A(a)(3) of the Trade Act, I have determined that Cameroon is not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act. Accordingly, I have decided to terminate the designation of Cameroon as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act, effective January 1, 2020.

4. I have determined that the Republic of Niger (Niger), the Central African Republic, and the Republic of The Gambia (The Gambia) have not established effective visa systems and related customs procedures meeting the requirements of section 113 of the AGOA (19 U.S.C. 3722), which are required in order for a beneficiary sub-Saharan African country to receive the preferential treatment provided for under section 112(a) of the AGOA (19 U.S.C. 3721(a)). Therefore, Niger, the Central African Republic, and The Gambia are not eligible for the treatment provided for under section 112(a).

5. Section 112(c) of the AGOA, as amended in section 6002 of the Africa Investment Incentive Act of 2006 (division D, title VI, Public Law 109–432, 120 Stat. 2922, 3190–93 (19 U.S.C. 3721(c)), provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

6. I have determined that Guinea-Bissau and Niger satisfy the criterion for treatment as ''lesser developed beneficiary sub-Saharan African countries'' under section 112(c) of the AGOA.

7. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the ''USIFTA''), which the Congress approved in section 3 of the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (Public Law 99–47, 99 Stat. 82 (19 U.S.C. 2112 note)).

8. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension,

modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

9. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

10. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

11. Each year from 2008 through 2018, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

12. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; Proclamation 8770 of December 29, 2011; Proclamation 8921 of December 20, 2012; Proclamation 9072 of December 23, 2013; Proclamation 9223 of December 23, 2014; Proclamation 9383 of December 21, 2015; Proclamation 9555 of December 15, 2016; Proclamation 9687 of December 22, 2017; and Proclamation 9834 of December 21, 2018, modified the Harmonized Tariff Schedule of the United States (the ''HTS'') to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

13. On December 4, 2019, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2020, and to allow for further negotiations on an agreement to replace the 2004 Agreement.

14. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2020, for specified quantities of certain agricultural products of Israel, as provided in Annex I of this proclamation.

15. On September 16, 2019, in accordance with section 103(a)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (the ''Trade Priorities Act'') (title I of Public Law 114–26, 129 Stat. 319, 333 (19 U.S.C. 4202(a)(2)), I notified the Congress that I intended to enter into an agreement regarding tariff barriers with Japan under section 103(a) of the Trade Priorities Act. On October 7, 2019, the United States and Japan entered into the Trade Agreement between the United States and Japan.

16. Section 103(a)(1) of the Trade Priorities Act authorizes the President to proclaim such modification of any existing duty as the President determines to be required or appropriate to carry out a trade agreement entered into under section 103(a). The President generally may proclaim such modification provided that the modification does not reduce the rate of duty to a rate that is less than 50 percent of the date of such duty that applied on June 29, 2015; does not reduce the rate of duty below that applicable under the Uruguay Round Agreements or a successor agreement on any import-sensitive agricultural product; and does not increase the rate of duty above the rate of such duty that applied on June 29, 2015.

17. Pursuant to section 103(a) of the Trade Priorities Act, I have determined that it is required and appropriate to modify existing duties with respect to certain goods to carry out the Trade Agreement between the United States and Japan.

18. In Proclamation 6763 of December 23, 1994, the President established a tariff-rate quota for beef. Section 404(d)(3) of the Uruguay Round Agreements Act (title IV of Public Law 103–465, 108 Stat. 4809, 4960 (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas and to modify any allocation as the President determines appropriate. Pursuant to section 404(d)(3) of the Uruguay Round Agreements Act, I have determined that it is appropriate to modify the tariff-rate quota allocation for beef by providing that the tariff-rate quota allocation for Japan will become part of the total tariff-rate quota allocation for other countries or areas.

19. Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (title I of Public Law 100–418, 102 Stat. 1107, 1151 (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the United States International Trade Commission (the ''Commission'') under section 1205 of the 1988 Act (19 U.S.C. 3005) if the President determines that the modifications are in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and do not run counter to the national economic interest of the United States.

20. In Proclamation 9549 of December 1, 2016, pursuant to section 1206(a) of the 1988 Act, the President proclaimed modifications to the HTS to conform it to the Convention, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions. These modifications to the HTS were set out in Annex I of Publication 4653 of the Commission, which was incorporated by reference into the proclamation.

21. Proclamation 7746 of December 30, 2003, implemented the United States-Chile Free Trade Agreement (the ''USCFTA'') with respect to the United States and, pursuant to the United States-Chile Free Trade Agreement Implementation Act (the ''USCFTA Act'') (Public Law 108–77, 117 Stat. 909 (19 U.S.C. 3805 note)), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USCFTA.

22. In order to ensure the continuation of such staged reductions in rates of duty for originating goods of Chile in tariff categories that were modified to reflect amendments to the Convention, Proclamation 9549 made modifications to the HTS that the President determined were necessary or appropriate to carry out the duty reductions proclaimed in Proclamation 7746. The United States and Chile are parties to the Convention.

23. Section 201 of the USCFTA Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.7, 3.9, Article 3.20(8), (9), (10), and (11), and Annex 3.3 (including the schedule of United States duty reductions with respect to originating goods) of the USCFTA.

24. I have determined that, pursuant to section 201 of the USCFTA Act and section 1206(a) of the 1988 Act, modifications to the HTS are necessary or appropriate to ensure the continuation of tariff and certain other treatment accorded to originating goods under tariff categories modified in Proclamation 9549 and to carry out the duty reductions proclaimed in Proclamation 7746.

25. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder,

including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 506A(a)(1) and 506A(a)(3) of the Trade Act; sections 111(a) and 112(c) of the AGOA; section 6002 of the Africa Investment Incentive Act of 2006; section 4(b) of the USIFTA Act; section 103(a) of the Trade Priorities Act; section 404(d)(3) of the Uruguay Round Agreements Act; section 1206(a) of the 1988 Act; section 201 of the USCFTA Act; and section 604 of the Trade Act, do proclaim that:

(1) The designation of Cameroon as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act is terminated, effective January 1, 2020.

(2) In order to reflect in the HTS that beginning January 1, 2020, Cameroon shall no longer be designated as a beneficiary sub-Saharan African country, general note 16(a) to the HTS is modified by deleting ''Republic of Cameroon'' from the list of beneficiary sub-Saharan African countries. Note 7(a) to subchapter II and note 1 to subchapter XIX of chapter 98 of the HTS are modified to delete ''Cameroon'' from the list of beneficiary countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''Republic of Cameroon'' from the list of lesser developed beneficiary sub-Saharan African countries.

(3) In order to provide the tariff treatment intended under sections 112(a) and 113 of the AGOA, note 1 to subchapter XIX of Chapter 98 of the HTS is modified by deleting ''Niger'', ''Central African Republic'', and ''The Gambia'' from the list of beneficiary sub-Saharan African countries. Further, note 7(a) to subchapter II of chapter 98 of the HTS is modified by deleting ''Niger'' from the list of beneficiary sub-Saharan African countries.

(4) For purposes of section 112(c) of the AGOA, Guinea-Bissau and Niger are lesser developed beneficiary sub-Saharan African countries.

(5) In order to provide for Guinea-Bissau and Niger the tariff treatment intended under section 112(c) of the AGOA, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by inserting in alphabetical sequence in the list of lesser developed beneficiary sub-Saharan African countries ''Guinea-Bissau'' and ''Niger''.

(6) The modifications to the HTS set forth in paragraphs (1) through (5) of this proclamation shall be effective with respect to articles that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2020.

(7) In order to implement United States tariff commitments under the 2004 Agreement through December 31, 2020, the HTS is modified as provided in Annex I of this proclamation.

(8) The modifications to the HTS set forth in Annex I of this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2020.

(9) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex I of this proclamation, shall continue in effect through December 31, 2020.

(10) In order to modify tariffs on certain goods to carry out the Trade Agreement between the United States and Japan, the HTS is modified as set forth in Annex II of this proclamation.

(11) The modifications to the HTS set forth in Annex II of this proclamation shall be effective with respect to originating goods, as defined in the Trade Agreement between the United States and Japan, effective on the dates specified in Annex II and on any subsequent dates set forth for such duty reductions in Annex II.

(12) The Secretary of the Treasury shall use existing authority to issue any regulations necessary to implement the modifications made pursuant to paragraphs (10) and (11) of this proclamation.

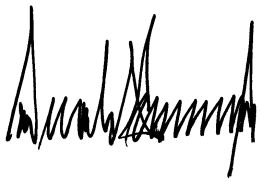
(13) Additional U.S. note 3 to chapter 2 of the HTS is modified as specified in Annex III of this proclamation. The modifications to the HTS set forth in Annex III of this proclamation shall be effective with respect to goods that are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2020.

(14) In order to reflect in the HTS the modifications to the rules of origin under the USCFTA, general note 26 to the HTS is modified as provided in Annex IV of this proclamation.

(15) The modifications to the HTS made by paragraph (14) of this proclamation shall enter into effect on April 1, 2020.

(16) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of December, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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ANNEX I

TEMPORARY EXTENSION OF CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2020, and through the close of December 31, 2020, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2019," and by inserting in lieu thereof "December 31, 2020".

2. U.S. note 3 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2020" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2020" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2020" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2020" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2020" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "707,000".

ANNEX II

TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES TO IMPLEMENT THE TRADE AGREEMENT BETWEEN JAPAN AND THE UNITED STATES OF AMERICA

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2020, the Harmonized Tariff Schedule of the United States ("HTS") is modified as set forth herein:

1. (a) General note 1 is modified by deleting "through 29" and by inserting in lieu thereof "through 36".

(b) General note 3(c)(i) is modified by inserting in alphabetical sequence the following:

"Trade Agreement between the United States and Japan.....JP"

2. The following new general note 36 is inserted in numerical sequence:

"36. Trade Agreement between the United States and Japan.

(a) Originating goods under the terms of the Trade Agreement between the United States and Japan, entered into on October 7, 2019, are subject to duty as provided herein and in subchapter XXI of chapter 99 of the tariff schedule. For the purposes of this note, originating goods of Japan, as defined in Annex II of the Trade Agreement between the United States and Japan, that are imported into the customs territory of the United States and entered under a provision for which a rate of duty appears in the "Special" subcolumn of column 1 followed by the symbol "JP" in parentheses are eligible for the tariff treatment, and any applicable quantitative limitations, set forth in the "Special" subcolumn of Rates of Duty Column 1.

(b) Documentation and action upon claims under this note.

(i) An importer may make a claim for preferential tariff treatment for a good under the terms of this note based on the importer's knowledge or on information in the importer's possession that the good is originating.

(ii) For the purposes of claiming preferential tariff treatment, the importer shall make a statement, forming part of the import documentation, declaring that the good qualifies as an originating good.

(iii) The importer shall be prepared to submit, upon request by the appropriate customs officer, a supporting statement setting forth the basis for its claim that the good qualifies as an originating good. The statement need not be in a prescribed formant and may be submitted electronically, where feasible.

(iv) The appropriate customs officer may conduct a verification for purposes of determining whether a good qualifies for preferential tariff treatment, by, for example, requesting that the importer provide additional information or other information relevant to that verification.

(v) A claim for preferential tariff treatment may be denied if:

(A) U.S. Customs and Border Protection determines that the good does not qualify for preferential tariff treatment;

(B) pursuant to this note, U.S. Customs and Border Protection has not received sufficient information to determine that the good qualifies for preferential tariff treatment; or

(C) the importer fails to comply with the requirements of this note and applicable customs regulations."

3. New subchapter XXI entitled "Trade Agreement between the United States and Japan" is hereby added at the end of chapter 99 of the HTS, including the following new notes and tariff provisions, and material in the new subheadings and superior text thereto is inserted in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1-General", and "Rates of Duty 1-Special", respectively.

4. New U.S. note 1 is hereby inserted in such subchapter XXI:

"1. The provisions of this subchapter contain modifications of the provisions of the tariff schedule established pursuant to the Trade Agreement between the United States and Japan, entered under the terms of general note 36 to the tariff schedule and described in subheadings 9921.01.01 through 9921.02.02, inclusive, in this subchapter. Unless otherwise expressly indicated herein, such subheadings apply to goods of Japan, under the terms of general note 36 to the tariff schedule for which a rate of duty followed by the symbol "(JP)" is herein provided. Originating goods of Japan described in such subheadings and entered into the customs territory of the United States shall be subject to duty as provided herein in lieu of the duty rates otherwise set forth in the tariff schedule."

Section B. Effective with respect to goods of Japan, under the terms of general note 36 to the tariff schedule, entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01am Eastern Standard Time on January 1, 2020, the HTS is modified as follows:

1. For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by inserting in alphabetical order in the parenthesis following the "Free" rate, the symbol "JP,":

0602.30.00	0602.90.60	0810.70.00
0602.90.30	0807.19.50	1515.90.60

3403.19.10	8501.64.00
4009.11.00	8502.11.00
4016.93.50	8502.12.00
7318.29.00	8502.20.00
7320.90.50	8502.39.00
7326.90.86	8504.33.00
7410.11.00	8504.34.00
7410.12.00	8505.11.00
7410.21.30	8506.80.00
7410.21.60	8515.31.00
7410.22.00	8515.90.20
8207.19.60	8535.29.00
8207.30.60	8539.29.40
8207.70.60	8546.20.00
8301.60.00	8607.19.90
8411.99.90	8714.93.28
8414.10.00	9002.11.90
8423.90.90	9004.10.00
8424.89.90	9004.90.00
8424.90.10	9032.10.00
8465.92.00	9205.10.00
8465.93.00	9205.90.14
8501.51.20	9205.90.18
8501.51.40	9209.94.80
8501.51.60	
8501.62.00	

2. For subheading 8415.90.80, the Rates of Duty 1-Special subcolumn is modified by inserting, "See 9921.01.01-9921.01.02 (JP)".

3. Subchapter XXI of chapter 99 is modified by inserting the following new subheadings and superior text in the columns labeled "Heading/Subheading", "Article Description", and Rates of Duty 1-Special", respectively:

Heading/ Subheading		Article description	Rates of Duty		
			1		2
			General	Special	
		"Parts of air conditioning machines of heading 8415 (provided in subheading 8415.90.80), including parts of those machines in which the humidity cannot be separately regulated:			
9921.01.01		Of automotive air conditioners		1.4% (JP)	
9921.01.02		Other		Free (JP)"	

4. For the following subheadings, the Rates of Duty 1-Special Subcolumn is modified by (1) inserting for each enumerated subheading, the rate of duty in the Date of Entry into Force ("EIF") column followed by the symbol "JP" in parentheses, on January 1, 2020, and (2) on January 1 of each of the subsequent years for each enumerated subheading, deleting the rate of duty before the symbol "JP" in parentheses and inserting in lieu thereof the rate of duty in the column of the such year.

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
0602.90.40	1.75%	Free	Free	Free	Free	Free	Free	Free	Free	Free
0602.90.90	2.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
0603.12.30	1.6%	Free	Free	Free	Free	Free	Free	Free	Free	Free
0603.12.70	4.8%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0603.13.00	4.8%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0603.14.00	4.8%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0603.15.00	4.8%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0603.19.01	4.8%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0603.90.00	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
0714.30.10	5.34%	4.27%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0714.30.60	6.92%	5.54%	4.15%	4.15%	4.15%	4.15%	4.15%	4.15%	4.15%	4.15%
0807.11.30	7.5%	6%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
0807.19.10	11.52%	10.24%	8.96%	7.68%	6.4%	6.4%	6.4%	6.4%	6.4%	6.4%
0807.19.60	5.25%	4.2%	3.15%	3.15%	3.15%	3.15%	3.15%	3.15%	3.15%	3.15%

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
0807.19.70	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
0807.19.80	25.2%	22.4%	19.6%	16.8%	14%	14%	14%	14%	14%	14%
0902.10.10	5.34%	4.27%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
0902.20.10	5.34%	4.27%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%	3.2%
1515.90.80	1.6%	Free	Free	Free	Free	Free	Free	Free	Free	Free
1704.10.00	3.6%	3.2%	2.8%	2.4%	2.0%	1.6%	1.2%	0.8%	0.4%	Free
1704.90.10	4.05%	3.6%	3.15%	2.7%	2.25%	1.8%	1.35%	0.9%	0.45%	Free
1704.90.35	5.04%	4.48%	3.92%	3.36%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
1704.90.52	10.98%	9.76%	8.54%	7.32%	6.1%	6.1%	6.1%	6.1%	6.1%	6.1%
1806.20.22	2.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
1806.20.60	1.6%	1.2%	0.8%	0.4%	Free	Free	Free	Free	Free	Free
1806.20.67	9%	8%	7%	6%	5%	5%	5%	5%	5%	5%
1806.20.79	8.34%	6.67%	5%	5%	5%	5%	5%	5%	5%	5%
1806.31.00	4.67%	3.74%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
1806.32.01	2.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
1806.32.55	6.3%	5.6%	4.9%	4.2%	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
1806.90.01	2.8%	2.1%	1.4%	0.7%	Free	Free	Free	Free	Free	Free
2103.10.00	2.4%	1.8%	1.2%	0.6%	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
2103.90.40	2.56%	1.92%	1.28%	0.64%	Free	Free	Free	Free	Free	Free
2103.90.72	6.25%	5%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%	3.75%
2105.00.05	18%	16%	14%	12%	10%	10%	10%	10%	10%	10%
2105.00.25	18%	16%	14%	12%	10%	10%	10%	10%	10%	10%
2841.90.50	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
2934.10.10	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
2934.10.90	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
2934.99.15	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
3403.19.50	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
3403.91.10	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
3403.91.50	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
3403.99.00	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
3701.20.00	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
3809.91.00	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
3824.99.92	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
3926.30.10	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
3926.30.50	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%
4011.80.20	1%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
4011.80.80	0.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
6909.19.50	1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7009.91.50	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
7009.92.50	3.5%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
7307.91.10	0.3%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7307.91.30	0.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7307.91.50	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
7307.92.90	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7307.99.10	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7307.99.30	0.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7307.99.50	1.3%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7318.14.10	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
7318.14.50	5.6%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%	4.3%
7318.19.00	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%
7318.21.00	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
7318.24.00	0.8%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7320.10.90	0.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
7616.10.70	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8205.40.00	3.2%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%	3.1%
8205.59.10	4.2%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%	3.6%
8207.20.00	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8207.30.30	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%
8207.40.30	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%
8207.40.60	1.8%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8207.50.20	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8207.60.00	1.8%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8207.70.30	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8207.90.75	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8209.00.00	1.6%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8301.40.30	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8301.40.60	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%	2.85%
8301.70.00	1.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8406.81.10	3.7%	3.35%	3.35%	3.35%	3.35%	3.35%	3.35%	3.35%	3.35%	3.35%
8406.90.30	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8406.90.40	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8406.90.45	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8419.50.10	1.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8456.11.10	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8456.90.31	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8457.10.00	1.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8457.30.00	0.3%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8458.11.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8458.91.10	1.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8458.91.50	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8459.31.00	1.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8459.61.00	1.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8460.29.01	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8460.90.40	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8461.40.10	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
8461.50.80	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8462.10.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8462.21.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8462.29.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8462.41.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8462.99.80	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8463.30.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8463.90.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.10.01	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.20.80	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.92.50	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.93.53	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.93.98	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8466.94.85	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.10.90	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.20.00	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.30.00	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.59.01	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.80.00	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8477.90.85	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8480.41.00	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8480.71.80	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8480.79.90	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8481.80.30	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
8501.51.50	0.3%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8507.80.81	0.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.16	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.24	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.28	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.32	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.36	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.40	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.44	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.48	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.52	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.56	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.64	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.72	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.80	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8528.72.97	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8538.90.30	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8538.90.60	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8538.90.81	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8539.29.10	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%	2.9%
8539.29.20	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%	2.6%
8544.60.20	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8544.60.40	0.5%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8544.60.60	0.2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8607.99.50	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8712.00.15	8%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
8712.00.25	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
8712.00.35	8%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
8712.00.44	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%	2.75%
8712.00.48	8%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%	5.5%
8712.00.50	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8714.91.20	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8714.91.30	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
8714.91.50	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
8714.92.10	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
8714.92.50	7%	5%	5%	5%	5%	5%	5%	5%	5%	5%
8714.93.35	7%	5%	5%	5%	5%	5%	5%	5%	5%	5%
8714.94.90	7%	5%	5%	5%	5%	5%	5%	5%	5%	5%
8714.95.00	5%	4%	4%	4%	4%	4%	4%	4%	4%	4%
8714.96.10	5%	4%	4%	4%	4%	4%	4%	4%	4%	4%
8714.96.90	7%	5%	5%	5%	5%	5%	5%	5%	5%	5%
8714.99.80	7%	5%	5%	5%	5%	5%	5%	5%	5%	5%
9013.10.10	11.9%	8.9%	7.45%	7.45%	7.45%	7.45%	7.45%	7.45%	7.45%	7.45%
9017.80.00	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%	2.65%
9201.10.00	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9201.20.00	1.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9205.90.40	1.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9207.10.00	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%	2.7%
9207.90.00	2%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9506.31.00	1.4%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9506.39.00	1.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9506.51.40	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9506.51.60	0.1%	Free	Free	Free	Free	Free	Free	Free	Free	Free

HTS Subheading	EIF	2021	2022	2023	2024	2025	2026	2027	2028	2029
9507.20.80	1.8%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9507.30.60	0.9%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9507.90.20	0.7%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9507.90.40	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%	2.8%
9507.90.70	6%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%	4.5%
9608.20.00	1%	Free	Free	Free	Free	Free	Free	Free	Free	Free
9608.40.40	3.6%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%	3.3%
9612.10.90	4.9%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%	3.95%

ANNEX III

MODIFICATIONS TO NOTE 3 TO CHAPTER 2 OF THE HARMONIZED TARIFF SCHEDULE

1. Additional U.S. note 3 to chapter 2 of the Harmonized Tariff Schedule of the United States is modified by deleting from the table "Japan 200"; by deleting the quantity "64,805"; and by inserting in lieu of the latter quantity "65,005".

ANNEX IV

TECHNICAL RECTIFICATIONS TO THE RULES OF ORIGIN FOR THE UNITED STATES-CHILE FREE TRADE AGREEMENT, AS REFLECTED IN THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of Chile, under the terms of general note 26 of the Harmonized Tariff Schedule of the United States ("HTS") that are entered for consumption, or withdrawn from warehouse for consumption, on or after the date announced by the United States Trade Representative and published in the Federal Register, general note 26(n) to the HTS is modified as follows:

1. Tariff classification rule ("TCR") 7 to chapter 21 is modifying by deleting "2202.90" and inserting in lieu thereof "2202.99".

2. TCR 8 to chapter 21 is modified by deleting "2202.90" at each instance and by inserting in lieu thereof "2202.99".

3. TCRs 3 and 4 to chapter 22 are deleted and the following new TCRs are inserted in lieu thereof:

"3. A change to subheading 2202.91 from any other chapter.

4. (A) A change to any single fruit or single vegetable juice of subheading 2202.99 from any other chapter, except from headings 0805 or 2009, or from fruit or vegetable juices of subheading 2106.90; or

(B) A change to mixtures of juices of subheading 2202.99:

(1) from any other chapter or from pineapple, banana or mango juices of heading 2009 or subheading 2106.90, but not from heading 0805 or from other juices or juice mixtures of heading 2009 or subheading 2106.90; or

(2) from any other subheading within chapter 22, heading 2009 or from mixtures of juices of subheading 2106.90, whether or not there is also a change from any other chapter, provided that a single juice ingredient, or juice ingredients from one non-Party, constitute in single strength form no more than 60 percent by volume of the good; or

(C) A change to beverages containing milk of subheading 2202.99 from any other chapter, except from chapter 4 or from dairy preparations containing over 10 percent by weight of milk solids of subheading 1901.90; or

(D) A change to other goods of subheading 2202.99 from any other chapter.

5. A change to headings 2203 through 2209 from any other heading, except from another heading within that group."

4. TCR 13 to chapter 28 is deleted and the following new TCR is inserted in lieu thereof:

"13. A change to subheading 2811.12 from any other subheading, except from subheadings 2811.19 or 2811.22.

13A. A change to subheading 2811.19 from any other subheading, except from subheadings 2811.12 or 2811.22."

5. TCR 84 to chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"84. A change to heading 2847 from any other heading."

6. TCR 48 to chapter 29 is modified by deleting "2914.70" and inserting in lieu thereof "2914.79".

7. TCR 66 to chapter 29 is modified by deleting "2922.13" and inserting in lieu thereof "2922.12".

8. TCR 3 to chapter 30 is modified by deleting "3002.10" and inserting in lieu thereof "3002.11".

9. TCR 8 to chapter 30 is modified by deleting "subheading 3003.40" and inserting in lieu thereof "subheadings 3003.41through 3003.49".

10. TCR 9 to chapter 30 is modified by deleting "subheading 3003.90" and inserting in lieu thereof "subheadings 3003.60 through 3003.90".

11. TCR 15 to chapter 30 is modified by deleting "subheading 3004.40" and inserting in lieu thereof "subheadings 3004.41 through 3004.49".

12. TCR 17 to chapter 30 is modified by deleting "subheading 3004.90" and inserting in lieu thereof "subheadings 3004.60 through 3004.90".

13. TCR 11 to chapter 31 is deleted and the following new TCR is inserted in lieu thereof:

"11. A change to subheadings 3103.11 through 3103.19 from any other subheading."

14. TCR 11 to chapter 38 modified by deleting "subheading 3808.50" and inserting in lieu thereof "subheadings 3808.52 through 3808.59".

15. TCR 12 to chapter 38 is modified by deleting "3808.91" and inserting in lieu thereof "3808.61".

16. TCR 28 to chapter 38 is modified by deleting "3824.83" at each instance and inserting in lieu thereof "3824.91".

17. TCR 28A to chapter 38 is modified by deleting "3824.90" at each instance and inserting in lieu thereof "3824.99".

18. TCR 121 to chapter 84 is deleted.

19. TCR 61 to chapter 85 is modified by deleting "8528.41" and inserting in lieu thereof "8528.42".

20. TCR 62A to chapter 85 is modified by deleting "8528.51" and inserting in lieu thereof "8528.52".

21. TCR 62C to chapter 85 is modified by deleting "8528.61" and inserting in lieu thereof "8528.62".

22. TCR 79 to chapter 85 is inserted in numerical sequence.

"79. A change to subheading 8539.50 from any other subheading."

23. TCR 95 to chapter 85 is deleted and the following new TCRs are inserted in lieu thereof:

"95. A change to subheadings 8541.10 through 8542.90 from any other subheading, including another subheading within that group."

24. TCR 11 to chapter 90 is modified by deleting "subheadings 9006.10 through 9006.30" at each instance and inserting in lieu thereof "subheading 9006.30".

25. TCR 4 to chapter 94 is modified by deleting "9403.80" at each instance and inserting in lieu thereof "9403.89".

26. New TCR 27 to chapter 96 is inserted in numerical sequence.

"27. A change to heading 9620 from any other heading."

[FR Doc. 2019–28285

Filed 12–27–19; 11:15 am]

Billing code 7020–02–C

Presidential Documents

Executive Order 13901 of December 26, 2019

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303 and section 748 of division C of the Consolidated Appropriations Act, 2020, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

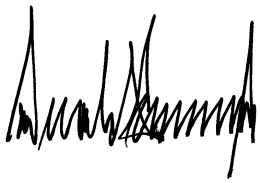
(a) Pursuant to sections 5304 and 5304a of title 5, United States Code, and section 748 of division C of the Consolidated Appropriations Act, 2020, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the ***Federal Register***.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2020. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2020.

Sec. 8. *Prior Order Superseded.* Executive Order 13866 of March 28, 2019, is superseded as of the effective dates specified in section 7 of this order.



THE WHITE HOUSE,

December 26, 2019.

Billing code 3295–F0–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

	1	2	3	4	5	6	7	8	9	10
GS-1	$19,543	$20,198	$20,848	$21,494	$22,144	$22,524	$23,166	$23,814	$23,840	$24,448
GS-2	21,974	22,497	23,225	23,840	24,108	24,817	25,526	26,235	26,944	27,653
GS-3	23,976	24,775	25,574	26,373	27,172	27,971	28,770	29,569	30,368	31,167
GS-4	26,915	27,812	28,709	29,606	30,503	31,400	32,297	33,194	34,091	34,988
GS-5	30,113	31,117	32,121	33,125	34,129	35,133	36,137	37,141	38,145	39,149
GS-6	33,567	34,686	35,805	36,924	38,043	39,162	40,281	41,400	42,519	43,638
GS-7	37,301	38,544	39,787	41,030	42,273	43,516	44,759	46,002	47,245	48,488
GS-8	41,310	42,687	44,064	45,441	46,818	48,195	49,572	50,949	52,326	53,703
GS-9	45,627	47,148	48,669	50,190	51,711	53,232	54,753	56,274	57,795	59,316
GS-10	50,246	51,921	53,596	55,271	56,946	58,621	60,296	61,971	63,646	65,321
GS-11	55,204	57,044	58,884	60,724	62,564	64,404	66,244	68,084	69,924	71,764
GS-12	66,167	68,373	70,579	72,785	74,991	77,197	79,403	81,609	83,815	86,021
GS-13	78,681	81,304	83,927	86,550	89,173	91,796	94,419	97,042	99,665	102,288
GS-14	92,977	96,076	99,175	102,274	105,373	108,472	111,571	114,670	117,769	120,868
GS-15	109,366	113,012	116,658	120,304	123,950	127,596	131,242	134,888	138,534	142,180

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$109,366	$88,619	$71,808	$58,186	$47,148	$42,149	$37,680	$33,685	$30,113
2	112,647	91,278	73,962	59,932	48,562	43,413	38,810	34,696	31,016
3	116,026	94,016	76,181	61,730	50,019	44,716	39,975	35,736	31,947
4	119,507	96,836	78,467	63,581	51,520	46,057	41,174	36,809	32,905
5	123,092	99,741	80,821	65,489	53,065	47,439	42,409	37,913	33,892
6	126,785	102,734	83,245	67,454	54,657	48,862	43,681	39,050	34,909
7	130,589	105,816	85,743	69,477	56,297	50,328	44,992	40,222	35,956
8	134,506	108,990	88,315	71,561	57,986	51,838	46,342	41,428	37,035
9	138,542	112,260	90,964	73,708	59,726	53,393	47,732	42,671	38,146
10	142,180	115,628	93,693	75,920	61,517	54,995	49,164	43,951	39,291
11	142,180	119,097	96,504	78,197	63,363	56,645	50,639	45,270	40,469
12	142,180	122,669	99,399	80,543	65,264	58,344	52,158	46,628	41,683
13	142,180	126,350	102,381	82,959	67,222	60,094	53,723	48,027	42,934
14	142,180	130,140	105,452	85,448	69,238	61,897	55,334	49,468	44,222

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)*

	Minimum	Maximum
	$131,239	$160,100**

Physician, Dentist, and Podiatrist Base and Longevity Schedule***

Physician Grade	$107,569	$157,773
Dentist Grade	107,569	157,773
Podiatrist Grade	107,569	157,773

Chiropractor and Optometrist Schedule

Chief Grade	$109,366	$142,180
Senior Grade	92,977	120,868
Intermediate Grade	78,681	102,288
Full Grade	66,167	86,021
Associate Grade	55,204	71,764

Physician Assistant and Expanded-Function Dental Auxiliary Schedule****

Director Grade	$109,366	$142,180
Assistant Director Grade	92,977	120,868
Chief Grade	78,681	102,288
Senior Grade	66,167	86,021
Intermediate Grade	55,204	71,764
Full Grade	45,627	59,316
Associate Grade	39,263	51,044
Junior Grade	33,567	43,638

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* This schedule does not apply to the Director of Nursing Service or any incumbents who are physicians or dentists.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $160,100.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians, podiatrists, and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$131,239	$197,300
Agencies without a Certified SES Performance Appraisal System	$131,239	$181,500

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Level I	$219,200
Level II	197,300
Level III	181,500
Level IV	170,800
Level V	160,100

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Vice President	$253,300
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Chief Justice of the United States	$277,700
Associate Justices of the Supreme Court	265,600
Circuit Judges	229,500
District Judges	216,400
Judges of the Court of International Trade	216,400

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2020)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$10,999.50	$11,360.40	$11,599.50	$11,666.10	$11,964.60	$12,462.90	$12,579.00	$13,052.10	$13,188.30	$13,596.00	$14,186.10
O-7	9,140.10	9,564.60	9,761.10	9,917.40	10,200.00	10,479.60	10,802.70	11,124.60	11,447.70	12,462.90	13,319.70
O-6**	6,931.20	7,614.60	8,114.40	8,114.40	8,145.30	8,494.50	8,540.70	8,540.70	9,025.80	9,884.10	10,387.50
O-5	5,778.00	6,509.10	6,959.40	7,044.30	7,325.70	7,493.70	7,863.60	8,135.40	8,486.10	9,022.50	9,277.50
O-4	4,985.40	5,770.80	6,156.30	6,241.80	6,599.10	6,982.80	7,460.40	7,831.80	8,089.80	8,238.30	8,324.10
O-3***	4,383.30	4,968.60	5,362.50	5,847.30	6,127.80	6,435.00	6,633.90	6,960.60	7,131.30	7,131.30	7,131.30
O-2***	3,787.50	4,313.40	4,967.70	5,135.70	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30
O-1***	3,287.10	3,421.80	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$5,847.30	$6,127.80	$6,435.00	$6,633.90	$6,960.60	$7,236.30	$7,395.00	$7,610.70
O-2E	-	-	-	5,135.70	5,241.30	5,408.10	5,689.80	5,907.60	6,069.60	6,069.60	6,069.60
O-1E	-	-	-	4,136.40	4,416.90	4,580.10	4,747.20	4,911.00	5,135.70	5,135.70	5,135.70
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$4,530.00	$4,872.60	$5,012.40	$5,150.10	$5,387.10	$5,621.70	$5,859.30	$6,216.00	$6,529.20	$6,827.10	$7,071.30
W-3	4,137.00	4,309.20	4,486.20	4,544.10	4,728.90	5,093.70	5,473.20	5,652.00	5,859.00	6,071.70	6,455.10
W-2	3,660.60	4,006.80	4,113.30	4,186.50	4,423.80	4,792.80	4,975.80	5,155.50	5,375.70	5,547.90	5,703.60
W-1	3,213.00	3,559.20	3,651.90	3,848.40	4,080.60	4,423.20	4,582.80	4,806.60	5,026.50	5,199.60	5,358.60

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2020, which is $16,441.80 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2020, which is $13,341.60 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2020)
Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*	$16,441.80*
O-9	15,546.00	15,770.70	16,094.10	16,441.80*	16,441.80*	16,441.80*	16,441.80*	16,441.80*	16,441.80*	16,441.80*	16,441.80*
O-8	14,730.00	15,093.30	15,093.30	15,093.30	15,093.30	15,471.30	15,471.30	15,857.40	15,857.40	15,857.40	15,857.40
O-7	13,319.70	13,319.70	13,319.70	13,388.10	13,388.10	13,656.00	13,656.00	13,656.00	13,656.00	13,656.00	13,656.00
O-6**	10,890.90	11,177.40	11,467.80	12,030.00	12,030.00	12,270.30	12,270.30	12,270.30	12,270.30	12,270.30	12,270.30
O-5	9,530.10	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60	9,816.60
O-4	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10	8,324.10
O-3***	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30	7,131.30
O-2***	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30	5,241.30
O-1***	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40	4,136.40
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70	$7,610.70
O-2E	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60	6,069.60
O-1E	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70	5,135.70
WARRANT OFFICERS											
W-5	$8,054.70	$8,463.00	$8,767.50	$9,104.10	$9,104.10	$9,560.10	$9,560.10	$10,037.40	$10,037.40	$10,540.20	$10,540.20
W-4	7,309.20	7,658.40	7,945.20	8,272.80	8,272.80	8,437.80	8,437.80	8,437.80	8,437.80	8,437.80	8,437.80
W-3	6,713.70	6,868.20	7,032.60	7,256.70	7,256.70	7,256.70	7,256.70	7,256.70	7,256.70	7,256.70	7,256.70
W-2	5,890.20	6,012.90	6,109.80	6,109.80	6,109.80	6,109.80	6,109.80	6,109.80	6,109.80	6,109.80	6,109.80
W-1	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10	5,552.10

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2020, which is $16,441.80 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2020, which is $13,341.60 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2020)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$5,472.90	$5,596.80	$5,753.40	$5,936.70	$6,123.00
E-8	-	-	-	-	-	$4,480.20	4,678.20	4,800.90	4,947.60	5,107.20	5,394.60
E-7	$3,114.30	$3,399.00	$3,529.50	$3,701.40	$3,836.10	4,067.40	4,197.90	4,428.90	4,621.50	4,752.60	4,892.40
E-6	2,693.70	2,964.30	3,095.10	3,222.30	3,354.90	3,653.10	3,769.80	3,994.80	4,063.50	4,113.60	4,172.10
E-5	2,467.50	2,634.00	2,761.20	2,891.40	3,094.50	3,306.30	3,480.90	3,501.90	3,501.90	3,501.90	3,501.90
E-4	2,262.60	2,378.40	2,507.10	2,634.60	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50
E-3	2,042.70	2,171.10	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80
E-2	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50
E-1**	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10
E-1***	1,602.30	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $8,844.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2020)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$6,419.40	$6,671.40	$6,935.10	$7,340.10	$7,340.10	$7,706.40	$7,706.40	$8,092.20	$8,092.20	$8,497.50	$8,497.50
E-8	5,540.10	5,787.90	5,925.60	6,264.00	6,264.00	6,389.70	6,389.70	6,389.70	6,389.70	6,389.70	6,389.70
E-7	4,946.40	5,128.50	5,226.00	5,597.40	5,597.40	5,597.40	5,597.40	5,597.40	5,597.40	5,597.40	5,597.40
E-6	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10	4,172.10
E-5	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90	3,501.90
E-4	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50	2,746.50
E-3	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80	2,302.80
E-2	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50	1,942.50
E-1**	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10	1,733.10
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $8,844.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,150.50.

Note: As a result of the enactment of sections 602–604 of Public Law 105–85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

Locality Pay Area*	Rate
Alaska	29.67%
Albany-Schenectady, NY-MA	17.88%
Albuquerque-Santa Fe-Las Vegas, NM	16.68%
Atlanta–Athens-Clarke County–Sandy Springs, GA-AL	22.16%
Austin-Round Rock, TX	18.17%
Birmingham-Hoover-Talladega, AL	16.26%
Boston-Worcester-Providence, MA-RI-NH-ME	29.11%
Buffalo-Cheektowaga, NY	20.20%
Burlington-South Burlington, VT	16.89%
Charlotte-Concord, NC-SC	17.44%
Chicago-Naperville, IL-IN-WI	28.59%
Cincinnati-Wilmington-Maysville, OH-KY-IN	20.55%
Cleveland-Akron-Canton, OH	20.82%
Colorado Springs, CO	17.78%
Columbus-Marion-Zanesville, OH	20.02%
Corpus Christi-Kingsville-Alice, TX	16.56%
Dallas-Fort Worth, TX-OK	24.98%
Davenport-Moline, IA-IL	17.04%
Dayton-Springfield-Sidney, OH	19.18%
Denver-Aurora, CO	27.13%
Detroit-Warren-Ann Arbor, MI	27.32%
Harrisburg-Lebanon, PA	17.20%
Hartford-West Hartford, CT-MA	29.49%
Hawaii	19.56%
Houston-The Woodlands, TX	33.32%
Huntsville-Decatur-Albertville, AL	19.85%
Indianapolis-Carmel-Muncie, IN	16.92%
Kansas City-Overland Park-Kansas City, MO-KS	17.13%
Laredo, TX	18.88%
Las Vegas-Henderson, NV-AZ	17.68%
Los Angeles-Long Beach, CA	32.41%
Miami-Fort Lauderdale-Port St. Lucie, FL	23.51%
Milwaukee-Racine-Waukesha, WI	20.96%
Minneapolis-St. Paul, MN-WI	24.66%
New York-Newark, NY-NJ-CT-PA	33.98%
Omaha-Council Bluffs-Fremont, NE-IA	16.33%
Palm Bay-Melbourne-Titusville, FL	16.73%
Philadelphia-Reading-Camden, PA-NJ-DE-MD	26.04%
Phoenix-Mesa-Scottsdale, AZ	20.12%
Pittsburgh-New Castle-Weirton, PA-OH-WV	19.40%
Portland-Vancouver-Salem, OR-WA	23.74%
Raleigh-Durham-Chapel Hill, NC	20.49%
Richmond, VA	19.95%
Sacramento-Roseville, CA-NV	26.37%
San Antonio-New Braunfels-Pearsall, TX	16.77%
San Diego-Carlsbad, CA	29.77%
San Jose-San Francisco-Oakland, CA	41.44%
Seattle-Tacoma, WA	27.02%
St. Louis-St. Charles-Farmington, MO-IL	17.65%
Tucson-Nogales, AZ	17.19%
Virginia Beach-Norfolk, VA-NC	16.51%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA	30.48%
Rest of U.S.	15.95%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2020)

AL-3/A	$114,000
AL-3/B	122,700
AL-3/C	131,500
AL-3/D	140,400
AL-3/E	149,300
AL-3/F	157,800
AL-2	166,500
AL-1	170,800

[FR Doc. 2019–28286

Filed 12–27–19; 11:15 am]

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